CHAPTER 243

AN ACT to amend the prison law to conform to the state departments law, generally, and repealing certain provisions of article fifteen of the state departments law and articles twelve and twelve-a of the state charities law as amended and section one hundred and fifty-four of the state finance law

Became a law April 2, 1929, with the approval of the Governor. Passed, three-fifths being present

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

Section 1. The title of chapter forty-seven of the laws of nineteen hundred and nine, entitled "An act relating to prisons, constituting chapter forty-three of the consolidated laws," is hereby amended to read as follows:

An act in relation to the correction and detention of persons in state correctional institutions, constituting chapter forty-three of the consolidated laws.

§ 2. The schedule of articles of such chapter, with its heading, immediately preceding article one is hereby amended to read as follows:

CHAPTER 43 OF THE CONSOLIDATED LAWS

CORRECTION LAW

ARTICLE 1
SHORT TITLE; DEFINITIONS

§ 1. Short title. This chapter shall be known as the "Correction Law."

§ 2. Definitions. When used in this chapter, unless otherwise expressly stated or the context or subject matter otherwise requires, the following terms have the following meanings:

1. "Department" means the state department of corrections and community supervision;

2. "Commissioner" means the state commissioner of corrections and community supervision;

3. "Commission" means the state commission of correction;

4. (a) "Correctional facility". Any place operated by the department and designated by the commissioner as a place for the confinement of persons under sentence of imprisonment or persons committed for failure to pay a fine. Except as provided in paragraph (b) of this subdivision, whenever reference has been or hereafter will be made in any statute, judgment, sentence, commitment, court order or otherwise to a state prison, state reformatory, reception center, diagnostic center or other institution or facility in the department, such reference shall be deemed to mean "correctional facility".

(b) The term "correctional facility" shall not, however, be deemed to mean or to include any place operated by the department for the care and confinement of persons who have been found to be mentally defective or mentally ill by a court and who are confined in such place pursuant to an order of a court based upon such finding.

(c) Whenever the term "institution" is used in this chapter or elsewhere in such context as to mean an institution in the department, such term shall be deemed to include correctional facilities and any other place operated by the department as a place for the confinement of persons.

5. "Reception center". A correctional facility for reception, classification and program-planning for purposes of confinement, treatment and transfer.

6. "Residential treatment facility". A correctional facility consisting of a community based residence in or near a community where employment, educational and training opportunities are readily available

for persons who are on parole or conditional release and for persons who are or who will soon be eligible for release on parole who intend to reside in or near that community when released.

7. "Detention center". A correctional facility for the temporary detention of persons taken into custody upon violation of parole or upon violation of a condition of release, or of persons being transferred from other correctional facilities, or of persons who are assigned to other correctional facilities for confinement but whose presence is required in court or for some other purpose at a location that is distant from the institution of confinement.

8. "Correctional Camp". A correctional facility consisting of a camp maintained for the purpose of including conservation work in the program of incarcerated individuals.

9. "Diagnostic and treatment center". A correctional facility operated for the purpose of providing intensive physical, mental and sociological diagnostic and treatment services including pre-parole diagnostic evaluation, where requested by the board of parole, and scientific study of the social and mental aspects of the causes of crime.

10. "General confinement facility". A correctional facility for confinement and treatment of persons under institutional programs oriented to education, vocational training and industry.

11. "Work release facility". A facility designated by the commissioner as an institution that may conduct a work release program.

12. "Superintendent". The chief administrative officer of a correctional facility. Whenever the term "warden" appears in this chapter in such context as to mean an officer of a state correctional facility, such reference shall be deemed to mean "superintendent".

13. "Infant" or "minor" means a person who has not attained the age of eighteen years.

* 14. "Community treatment facility." A residential chemical

dependence facility approved as provided in section 32.01 of the mental hygiene law or pursuant to section 32.31 of such law used exclusively to provide substance abuse treatment services to persons eligible pursuant to section seventy-two-a of this chapter and who are otherwise eligible for temporary release pursuant to subdivision two of section eight hundred fifty-one of this chapter. These facilities shall be separate and distinct so as not to replace existing substance abuse treatment services.

* NB Expires September 1, 2027

15. "Shock incarceration correctional facility". A correctional facility designated by the commissioner as an institution that may conduct a shock incarceration program.

16. (a) "Local correctional facility." Any place operated by a county or the city of New York as a place for the confinement of persons duly committed to secure their attendance as witnesses in any criminal case, charged with crime and committed for trial or examination, awaiting the availability of a court, duly committed for any contempt or upon civil process, convicted of any offense and sentenced to imprisonment therein or awaiting transportation under sentence to imprisonment in a correctional facility, or pursuant to any other applicable provisions of law.

(b) Whenever the term "jail", "penitentiary" or "workhouse" is used in this chapter, such term shall be deemed to mean local correctional facility.

(c) Whenever the term "sheriff" is used in this chapter, such term shall be deemed to include the warden, superintendent, or other person in charge of a local correctional facility.

17. "Alcohol and substance abuse treatment facility." A correctional facility designed to house medium security incarcerated individuals as defined by department rules and regulations and operated for the purpose of providing intensive alcohol and substance abuse treatment services. Such services shall ensure comprehensive treatment for alcoholism and substance abuse to incarcerated individuals who have been identified by the commissioner or his or her designee as having had or presently

having a history of alcoholism or substance abuse. Such services shall be provided in the facility in accordance with minimum standards promulgated by the department after consultation with the office of alcoholism and substance abuse services.

* 18. "Alcohol and substance abuse treatment correctional annex." A medium security correctional facility consisting of one or more residential dormitories, which provide intensive alcohol and substance abuse treatment services to incarcerated individuals who: (i) are otherwise eligible for temporary release, or (ii) stand convicted of a felony defined in article two hundred twenty or two hundred twenty-one of the penal law, and are within six months of being an eligible incarcerated individual as that term is defined in subdivision two of section eight hundred fifty-one of this chapter including such incarcerated individuals who are participating in such program pursuant to subdivision six of section 60.04 of the penal law. Notwithstanding the foregoing provisions of this subdivision, any incarcerated individual to be enrolled in this program pursuant to subdivision six of section 60.04 of the penal law shall be governed by the same rules and regulations promulgated by the department, including without limitation those rules and regulations establishing requirements for completion and those rules and regulations governing discipline and removal from the program. No such period of court ordered corrections based drug abuse treatment pursuant to this subdivision shall be required to extend beyond the defendant's conditional release date. Such treatment services may be provided by one or more outside service providers pursuant to contractual agreements with the department, provided, however, that any such provider shall be required to continue to provide, either directly or through formal or informal agreement with other providers, alcohol and substance abuse treatment services to incarcerated individuals who have successfully participated in such provider's incarcerative treatment services and who have been presumptively released, paroled, conditionally released or released to post release supervision under the supervision of the department and who are, as a condition of such release, required to participate in alcohol or substance abuse treatment. Such incarcerative services shall be provided in the facility in accordance with minimum standards promulgated by the department after consultation with the office of alcoholism and substance abuse services.

Such services to parolees shall be provided in accordance with standards promulgated by the department after consultation with the office of alcoholism and substance abuse services. Notwithstanding any other provision of law, any person who has successfully completed no less than six months of intensive alcohol and substance abuse treatment services in one of the department's eight designated alcohol and substance abuse treatment correctional annexes having a combined total capacity of two thousand five hundred fifty beds may be transferred to a program operated by or at a residential treatment facility, provided however, that a person under a determinate sentence as a second felony drug offender for a class B felony offense defined in article two hundred twenty of the penal law, who was sentenced pursuant to section 70.70 of such law, shall not be eligible to be transferred to a program operated at a residential treatment facility until the time served under imprisonment for his or her determinate sentence, including any jail time credited pursuant to subdivision three of section 70.30 of the penal law, shall be at least nine months. The commissioner shall report annually to the temporary president of the senate and the speaker of the assembly commencing January first, two thousand twelve the number of incarcerated individuals received by the department during the reporting period who are subject to a sentence which includes enrollment in substance abuse treatment in accordance with subdivision six of section 60.04 of the penal law, the number of such incarcerated individuals who are not placed in such treatment program and the reasons for such occurrences.

* NB Effective until September 1, 2027

* 18. "Alcohol and substance abuse treatment correctional annex." A medium security correctional facility consisting of one or more residential dormitories which provide intensive alcohol and substance abuse treatment services to incarcerated individuals who: (i) are otherwise eligible for temporary release, or (ii) stand convicted of a felony defined in article two hundred twenty or two hundred twenty-one of the penal law, and are within six months of being an eligible incarcerated individual as that term is defined in subdivision two of section eight hundred fifty-one of this chapter including such incarcerated individuals who are participating in such program pursuant to subdivision six of section 60.04 of the penal law. Notwithstanding

the foregoing provisions of this subdivision, any incarcerated individual to be enrolled in this program pursuant to subdivision six of section 60.04 of the penal law shall be governed by the same rules and regulations promulgated by the department, including without limitation those rules and regulations establishing requirements for completion and those rules and regulations governing discipline and removal from the program. No such period of court ordered corrections based drug abuse treatment pursuant to this subdivision shall be required to extend beyond the defendant's conditional release date. Such treatment services may be provided by one or more outside service providers pursuant to contractual agreements with the department, provided, however, that any such provider shall be required to continue to provide, either directly or through formal or informal agreement with other providers, alcohol and substance abuse treatment services to incarcerated individuals who have successfully participated in such provider's incarcerative treatment services and who have been presumptively released, paroled, conditionally released or released to post release supervision under the supervision of the department and who are, as a condition of such release, required to participate in alcohol or substance abuse treatment. Such incarcerative services shall be provided in the facility in accordance with minimum standards promulgated by the department after consultation with the office of alcoholism and substance abuse services. Such services to parolees shall be provided in accordance with standards promulgated by the department after consultation with the office of alcoholism and substance abuse services. The commissioner shall report annually to the majority leader of the senate and the speaker of the assembly commencing January first, two thousand twelve the number of incarcerated individuals received by the department during the reporting period who are subject to a sentence which includes enrollment in substance abuse treatment in accordance with subdivision six of section 60.04 of the penal law, the number of such incarcerated individuals who are not placed in such treatment program and the reasons for such occurrences.

* NB Effective September 1, 2027

19. "Vocational and skills training facility" means a correctional facility designated by the commissioner to provide a vocational and

skills training program ("VAST") to incarcerated individuals who need such service before they participate in a work release program. The VAST facility shall provide intensive assessment, counseling, job search assistance and where appropriate academic and vocational instruction to program participants. Such assistance may include an assessment of any incarcerated individual's education attainment level and skills aptitudes; career counseling and exploration; the development of a comprehensive instructional plan including identification of educational and training needs that may extend beyond the date of entry into work release; instructional programs including GED preparation or post-secondary instruction as appropriate; occupational skills training; life skills training; employment readiness including workplace behavior; and job search assistance. The department and the department of labor shall jointly develop activities providing career counseling, job search assistance, and job placement services for participants. Nothing contained in this section shall be deemed to modify the eligibility requirements provided by law applicable to incarcerated individuals participating in a work release program.

20. "Drug treatment campus" means a facility operated by the department to provide a program of intensive drug treatment services for individuals sentenced to parole supervision sentences pursuant to section 410.91 of the criminal procedure law or for certain parole violators. All such treatment services shall be provided by, or with the approval of and pursuant to a plan developed in conjunction with, the office of alcoholism and substance abuse services, and which plan shall include but not be limited to provision for an appropriate continuum of care that includes a needs assessment and treatment services for individuals while at this facility and upon discharge from such facility, including an enhanced aftercare program. Notwithstanding the foregoing, in the event that a person sentenced to parole supervision pursuant to section 410.91 of the criminal procedure law requires a degree of medical care or mental health care that cannot be provided at a drug treatment campus, the department, in writing, shall notify the person, provide a proposal describing a proposed alternative-to-the-drug-treatment-campus program, and notify him or her that he or she may object in writing to placement in such

alternative-to-the-drug-treatment-campus program. If the person objects in writing to placement in such alternative-to-the-drug-treatment-campus program, the department shall notify the sentencing court, provide such proposal to the court, and arrange for the person's prompt appearance before the court. The court shall provide the proposal and notice of a court appearance to the prosecutor, the person and the appropriate defense attorney. After considering the proposal and any submissions by the parties, and after a reasonable opportunity for the prosecutor, the person and counsel to be heard, the court may modify its sentencing order accordingly, notwithstanding the provisions of section 430.10 of the criminal procedure law. A person who successfully completes an alternative-to-the-drug-treatment-campus program within the department shall be treated in the same manner as a person who has successfully completed the drug treatment campus program, as set forth herein and in section 410.91 of the criminal procedure law.

21. "Residential mental health treatment unit" means housing for incarcerated individuals with serious mental illness that is operated jointly by the department and the office of mental health and is therapeutic in nature. Such units shall not be operated as disciplinary housing units, and decisions about treatment and conditions of confinement shall be made based upon a clinical assessment of the therapeutic needs of the incarcerated individual and maintenance of adequate safety and security on the unit. Such units shall include, but not be limited to, the residential mental health unit model, the behavioral health unit model, the intermediate care program and the intensive intermediate care program. The models shall be defined in regulations promulgated by the department in consultation with the commissioner of mental health consistent with this subdivision and section four hundred one of this chapter. Incarcerated individuals placed in a residential mental health treatment unit shall be offered at least four hours a day of structured out-of-cell therapeutic programming and/or mental health treatment, except on weekends or holidays, in addition to exercise, and may be provided with additional out-of-cell activities as are consistent with their mental health needs; provided, however, that the department may maintain no more than thirty-eight behavioral health unit beds in which the number of hours of out-of-cell

structured therapeutic programming and/or mental health treatment offered to incarcerated individuals on a daily basis, except on weekends or holidays, may be limited to only two hours. Out-of-cell therapeutic programming and/or mental health treatment need not be provided to an incarcerated individual for a brief orientation period following his or her arrival at a residential mental health treatment unit. The length of such orientation period shall be determined by a mental health clinician but in no event shall be longer than five business days.

22. "Mental health clinician" means a psychiatrist, psychologist, social worker or nurse practitioner who is licensed by the department of education and employed by the office of mental health.

23. "Segregated confinement" means the confinement of an incarcerated individual in any form of cell confinement for more than seventeen hours a day other than in a facility-wide emergency or for the purpose of providing medical or mental health treatment. Cell confinement that is implemented due to medical or mental health treatment shall be within a clinical area in the correctional facility or in as close proximity to a medical or mental health unit as possible.

24. "Joint case management committee" means a committee composed of staff from the department and the office of mental health. Such a committee shall be established at each level one and level two facility. Each committee shall consist of at least two clinical staff of the office of mental health and two officials of the department. The purpose of such committee shall be to review, monitor and coordinate the behavior and treatment plan of any incarcerated individual who is placed in segregated confinement or a residential mental health treatment unit and who is receiving services from the office of mental health.

25. "Joint central office review committee" means a committee comprised of central office personnel from the department and the office of mental health as designated by the respective commissioners.

26. "Treatment team" means a team consisting of an equal number of individuals from the department and the office of mental health who are

assigned to a residential mental health treatment unit and who will review and determine each incarcerated individual's appropriateness for movement through the various program phases, when applicable. The treatment team shall also review, monitor and coordinate the treatment plans for all incarcerated individual participants.

27. "Level one facility" means a correctional facility at which staff from the office of mental health are assigned on a full-time basis and able to provide treatment to incarcerated individuals with a major mental disorder. The array of available specialized services include: residential crisis treatment, residential day treatment, medication monitoring by psychiatric nursing staff, and potential commitment to the central New York Psychiatric Center.

28. "Level two facility" means a correctional facility at which staff from the office of mental health are assigned on a full-time basis and able to provide treatment to incarcerated individuals with a major mental disorder, but such disorder is not as acute as that of incarcerated individuals who require placement at a level one facility.

29. "Level three facility" means a correctional facility at which staff from the office of mental health are assigned on a part-time basis and able to provide treatment and medication to incarcerated individuals who either have a moderate mental disorder, or who are in remission from a disorder, and who are determined by staff of the office of mental health to be able to function adequately in the facility with such level of staffing.

30. "Level four facility" means a correctional facility at which staff from the office of mental health are assigned on a part-time basis and able to provide treatment to incarcerated individuals who may require limited intervention, excluding psychiatric medications.

31. "Community supervision" means the supervision of individuals released into the community on temporary release, presumptive release, parole, conditional release, post release supervision or medical parole.

32. "Correctional association" means the correctional association of New York, duly incorporated by chapter six of the laws of eighteen forty-six, and any of its employees, board members, and designees.

33. "Special populations" means any person: (a) twenty-one years of age or younger; (b) fifty-five years of age or older; (c) with a disability as defined in paragraph (a) of subdivision twenty-one of section two hundred ninety-two of the executive law; or (d) who is pregnant, in the first eight weeks of the post-partum recovery period after giving birth, or caring for a child in a correctional institution pursuant to subdivisions two or three of section six hundred eleven of this chapter.

34. "Residential rehabilitation unit" means a separate housing unit used for therapy, treatment, and rehabilitative programming of incarcerated people who have been determined to require more than fifteen days of segregated confinement pursuant to department proceedings. Such units shall be therapeutic and trauma-informed, and aim to address individual treatment and rehabilitation needs and underlying causes of problematic behaviors.

ARTICLE 2

DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

§ 5. Department of corrections and community supervision; commissioner. 1. There shall be in the state government a department of corrections and community supervision. The head of the department shall be the commissioner of corrections and community supervision, who shall be appointed by the governor, by and with the advice and consent of the senate, and hold office at the pleasure of the governor by whom he was appointed and until his successor is appointed and has qualified.

2. The commissioner of corrections and community supervision shall be the chief executive officer of the department.

3. The principal office of the department of corrections and community

supervision shall be in the county of Albany.

4. The commissioner is hereby authorized and empowered to convert the sentence of a person serving an indeterminate sentence of imprisonment, except a person serving a sentence with a maximum term of life imprisonment, to a determinate sentence of imprisonment equal to two-thirds of the maximum or aggregate maximum term imposed where such conversion is necessary to make such person eligible for transfer either to federal custody or to foreign countries under treaties that provide for the voluntary transfer of such persons on the execution of penal sentences entered into by the government of the United States with foreign countries.

5. The commissioner upon request, may in his or her discretion, authorize the purchase and presentation of a flag of the state of New York to the person designated to dispose of the remains of a deceased correction officer or parole officer.

6. The commissioner shall have the discretion to enter into agreements with the commissioner of mental health for the provision of security services relating to article ten of the mental hygiene law.

§ 7. Organization of department of corrections and community supervision; officers and employees; delegation by commissioner. 1. The commissioner of corrections and community supervision may, from time to time, create, abolish, transfer and consolidate divisions, bureaus and other units within the department not expressly established by law as he or she may determine necessary for the efficient operation of the department, subject to the approval of the director of the budget.

2. The commissioner of corrections and community supervision may appoint such deputies, directors, assistants and other officers and employees as may be needed for the performance of his or her duties and may prescribe their powers and duties and fix their compensation within the amounts appropriated therefor.

3. The commissioner may by order filed in the department of corrections and community supervision delegate any of his or her powers to or direct any of his or her duties to be performed by a deputy commissioner or a head of a division or bureau of such department.

4. (a) The commissioner shall not appoint any person as a correction officer or parole officer, unless such person has attained their twenty-first birthday, except as provided in paragraph (b) of this subdivision.

(b)(i) The commissioner may appoint a person as a correction officer after such person has attained their eighteenth birthday but before such person has attained their twenty-first birthday if such person has taken the civil service examination to become a correction officer on or before the sixtieth day following the day the commissioner first reports a staffing capacity of ninety percent or more after the effective date of this paragraph. This subparagraph shall not be construed to prevent any person appointed pursuant to this paragraph from continuing to serve as a correction officer after such date, subject to the restrictions in subparagraph (ii) of this paragraph.

(ii) A person serving as a correction officer prior to their twenty-first birthday shall not:

(1) obtain or use a firearm as a peace officer or as any part of their employment duties;

(2) conduct outside transport of incarcerated individuals, perform wall tower and arsenal duties, or any other role that requires a firearm;

(3) perform contact roles with incarcerated individuals without supervision in their first eighteen months of service as a correction officer;

(4) provide outside hospital coverage; or

(5) supervise outside work crews or community crews.

(iii) The department shall provide enhanced training and mentorship programs for correction officers under the age of twenty-one.

(iv) Nothing in this paragraph shall be construed to interfere with or conflict with the collective bargaining agreement with respect to the process of bidding on posts, provided that no correction officer may bid on a post for which they are not eligible pursuant to subparagraph (ii) of this paragraph.

(c) Within ninety days of the effective date of this paragraph and quarterly thereafter until the commissioner reports a staffing capacity of ninety percent or more, the commissioner shall review department staffing levels and report the department's staffing capacity to the governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate, and the minority leader of the assembly and shall post such report on its website.

*** § 8. Testing of certain applicants for employment.** 1. Any applicant for employment with the department as a correction officer at a facility of the department, shall be tested in accordance with the requirements of this section.

2. The department is hereby authorized to conduct, or to enter into agreements necessary for conducting tests for psychological screening of applicants covered by this section. Any such tests shall consist of at least three independent psychological instruments and shall meet the level of the art for psychological instruments to be used in a validation study developed for selection of such applicants. Such psychological instruments shall be used in testing and selection of applicants for positions referred to in subdivision one of this section. Persons who have been determined by a psychologist licensed under the laws of this state as suffering from psychotic disorders, serious character disorders, or other disorders which could hinder performance on the job may be deemed ineligible for appointment; provided, however, that other components of the employee selection process may be taken into consideration in reaching the determination as to whether a candidate is deemed eligible or ineligible for certification to a list of eligible candidates. The department's testing program shall include a component consisting of criteria related validity studies or other validity studies acceptable under relevant federal law governing equal employment.

3. The commissioner or his or her designee shall advise those candidates who have been deemed ineligible for appointment through

psychological screening and shall notify such persons of their right to appeal their disqualification. A person so deemed may apply to the commissioner for a review of the findings within thirty days of the date of notification. The commissioner shall refer the matter to an independent advisory board to review any recommendation. A copy of the advisory board's recommendations shall be promptly forwarded to the parties and to the commissioner. If the advisory board's recommendation is rejected by the commissioner, wholly or in part, the commissioner shall state his or her reasons for such rejection in writing.

4. The advisory board shall consist of three members who shall be selected by the president of the civil service commission. The membership of the board shall consist of: A psychologist and a psychiatrist, both of whom shall be licensed under the laws of this state, and a third member who shall be a representative of the department of civil service. The department of civil service shall maintain a list of alternate board members comprised of psychologists and psychiatrists, licensed under the laws of this state, and representatives nominated by the president of the civil service commission, who shall sit on the advisory board in the event a designated member is unable to serve, provided, however, that at all times the advisory board must be comprised of a psychiatrist, a psychologist and a representative of the department of civil service. Each of the members of the advisory board and their alternates so selected shall serve at the pleasure of the president of the civil service commission. Each of the members and alternates so selected shall be reimbursed for services and actual costs at a per diem rate not to exceed nine hundred dollars for the psychiatrist, seven hundred dollars for the psychologist and six hundred dollars for the representative of the civil service department; provided, however, that if any member of or alternate to the advisory board is an employee of the state of New York, then such representative shall only receive reimbursement for actual costs incurred.

5. The commissioner or his or her designee shall advise the department of civil service of those persons who have been determined under this section as being eligible for appointment from any list of eligible

candidates.

6. Notwithstanding any other provision of law, the results of the tests administered pursuant to this section shall be used solely for the qualification of a candidate for correction officer and the validation of the psychological instruments utilized. For all other purposes, the results of the examination shall be confidential and the records sealed by the department of corrections and community supervision, and not be available to any other agency or person except by authorization of the applicant or, upon written notice by order of a court of this state or the United States.

7. Prior to March first of each year, the commissioner of the department of corrections and community supervision will report to the governor, president of the senate and speaker of the assembly on the conduct of the psychological testing program and the results of such program in improving the quality of correction officer candidates.

* NB Expires September 1, 2027

§ 9. Access to information of incarcerated individuals via the internet. Notwithstanding any provision of law to the contrary, any information relating to the conviction of a person that is posted on a website maintained by or for the department, under article six of the public officers law, may be posted on such website for a period not to exceed three years after the expiration of such person's sentence of imprisonment and at the conclusion of any period of parole or post-release supervision; provided further, however, that any such website that allows the public to search for incarcerated individual information shall be programmed in such a manner that the search may be successful by input of the incarcerated individual's current name, any former legal name or any other known alias of the incarcerated individual. To the extent the department collects an individual's current name, former legal name, or any known alias from government records utilized by the department, the department shall ensure that such information is input into any website created pursuant to this section, provided, however, that nothing in this section shall be construed to require the department to obtain and input into the department's electronic record-keeping applications any individual's otherwise uncollected former legal name or any alias.

§ 10. Parole officers. 1. Employees in the department who perform the duties of supervising incarcerated individuals released on community supervision shall be parole officers.

2. No person shall be eligible for the position of parole officer who is under twenty-one years of age or who does not possess a baccalaureate degree conferred by a post-secondary institution accredited by an accrediting agency recognized by the United States office of education, or who is not fit physically, mentally and morally. Parole officer selection shall be based on definite qualifications as to character, ability and training with an emphasis on capacity and ability to provide a balanced approach to influencing human behavior and to use judgment in the enforcement of the rules and regulations of community supervision. Parole officers shall be persons likely to exercise a strong and helpful influence upon persons placed under their supervision while retaining the goal of protecting society.

3. The commissioner, acting in cooperation with the civil service commission, shall establish standards, preliminary requisites and requisites to govern the selection and appointment of parole officers.

4. A parole or warrant officer, in performing or in attempting to perform an arrest pursuant to and in conformance with the provisions of article one hundred forty of the criminal procedure law, shall be deemed to have performed such actions, relating to such arrest, in the course of employment in the department for purposes of disability or death from any injuries arising therefrom. The provisions of this subdivision shall apply whether or not such parole or warrant officer was on duty for the department at the time of performing such actions or performed such actions outside of his or her regular or usual duties within the department.

§ 11. Identification card program. 1. For purposes of this section, "identification card" shall have the same meaning as defined in section four hundred ninety of the vehicle and traffic law.

2. The commissioner, in consultation with the commissioner of motor vehicles, shall develop a program that would allow incarcerated individuals without an identification card, or incarcerated individuals who have not been issued a driver's license or learner's permit by the commissioner of motor vehicles, or incarcerated individuals whose driver's license or learner's permit is expired, suspended, revoked or surrendered, or incarcerated individuals whose identification card is expired, to obtain an identification card prior to the incarcerated individual's release from an institution or correctional facility under the jurisdiction of the department or upon the individual's release from an institution or correctional facility under the jurisdiction of the department at the option of the incarcerated individual.

3. The sentence and commitment or certificate of conviction of an incarcerated individual shall be deemed sufficient to grant authorization to the department of corrections and community supervision to assist an incarcerated individual in an institution or correctional facility under the jurisdiction of such department to apply for and obtain an identification card from the department of motor vehicles.

4. (a) Prior to an incarcerated individual's release from an institution or correctional facility under the jurisdiction of the department, the department shall notify the incarcerated individual, verbally and in writing, of such identification card program. The department shall also document that they offered to assist the incarcerated individual in obtaining an identification card and if such incarcerated individual declined. The department shall make diligent efforts to ensure that an incarcerated individual is provided with an identification card, if requested, prior to or upon the release of such individual from an institution or correctional facility under the jurisdiction of the department.

(b) If an identification card is obtained with the assistance of the department for an incarcerated individual prior to such individual's release from the department's custody, the identification card shall be kept in the incarcerated individual's records until such individual is released from an institution or correctional facility under the jurisdiction of the department; upon such individual's release, the identification card shall be provided to the individual.

5. The department shall collect data on the number of incarcerated individuals participating in the identification card program and issue a report on such data to the governor, the temporary president of the senate and the speaker of the assembly annually until December thirty-first, two thousand twenty-six.

§ 15-b. Education. The present director of vocational education shall be the director of education with the powers and duties of the director of education and hereafter shall be appointed by the commissioner. The director of education, at any time appointed, shall be a person whose education, training and experience shall cover fields of penology and of professional education. The educational qualifications shall include the satisfactory completion of three years of graduate work in education, penology, and allied fields. The head of the division of education shall have the direct supervision of all educational work in the department of corrections and community supervision and shall have full authority to visit and inspect all institutions of the department to observe, study, organize, and develop the educational activities of such institutions in harmony with the general educational program of the department. He or she shall be responsible to the commissioner and deputy commissioner designated by the commissioner.

§ 15-c. Acceptance of grants or gifts. The commissioner, with the approval of the governor, may accept as agent of the state any grant, including federal grants, or any gift for any of the purposes of this article. Any moneys so received may be expended by the department to develop and promote programs for the study and treatment of crime and delinquency, education and training of incarcerated individuals, staff improvement, research and evaluation, improvement of facilities, or any other lawful purpose, subject to the same limitations as to approval of expenditures and audit as are prescribed for state moneys appropriated for the purpose of this article.

§ 16. Expense of autopsy; state charge. 1. The reasonable expense of any inquiry, autopsy, examination or report prepared thereon conducted by a coroner, coroner's physician or medical examiner as required by law with respect to any death occurring to an incarcerated individual of an institution operated by the department shall, to the extent not otherwise reimbursed by the state, be a state charge. Reimbursement of such expense shall be made on vouchers submitted annually and certified by the chief fiscal officer of the county or city as the case may be on the audit and warrant of the comptroller.

2. The department shall acquire a preliminary or final death certificate for such incarcerated individual from a coroner, coroner's physician or medical examiner and forward such original death certificate to the next of kin.

§ 17. Notice to emergency contacts. Within twenty-four hours of the attempted suicide or hospitalization of an incarcerated individual or any other individual occurring in the custody of the department, the department shall notify the emergency contacts of such incarcerated individual or other such individual.

§ 18. Superintendents of correctional facilities. 1. Each correctional facility shall have a superintendent who shall be appointed by the commissioner. Each such superintendent shall be in the non-competitive-confidential class but shall be appointed from employees of the department who have at least three years of experience in correctional work in the department and (i) who have a permanent civil service appointment of salary grade twenty-seven or higher or who have a salary equivalent to a salary grade of twenty-seven or higher for correctional facilities with an incarcerated individual population capacity of four hundred or more incarcerated individuals, or (ii) who have a permanent civil service appointment of salary grade twenty-three or higher or who have a salary equivalent to a salary grade of twenty-three or higher for correctional facilities with an incarcerated individual population capacity of fewer than four hundred incarcerated individuals; provided that for correctional facilities of either capacity, the employee shall be appointed superintendent at the hiring rate set forth in section nineteen of this article or such other rate as may be appropriate, subject to the approval of the director of the budget; provided that in no event shall the salary upon appointment exceed the job rate. Such superintendents shall serve at the pleasure of the commissioner and shall have such other qualifications as may be prescribed by the commissioner, based on differences in duties, levels of responsibility, size and character of the correctional facility, knowledge, skills and abilities required, and other factors affecting the position.

2. Subject to the rules and statutory powers of the commissioner, or rules approved by him or her, the superintendent of a correctional facility shall have the supervision and management thereof.

3. Subject to the direction of the commissioner, and of the deputy and assistant commissioners in their respective fields of supervision, the superintendent of a correctional facility shall direct the work and define the duties of all officers and subordinates of the facility.

§ 19. Salary and emoluments of superintendents. 1. This section shall apply to each superintendent of a correctional facility appointed on or after August ninth, nineteen hundred seventy-five and any superintendent heretofore appointed who elects to be covered by the provisions thereof by filing such election with the commissioner.

a. The salary schedule for superintendents of a correctional facility with an incarcerated individual population capacity of four hundred or more incarcerated individuals shall be as follows:

Effective April first, two thousand twenty-six:

Hiring Rate	Job Rate
$154,918	$211,411

Effective April first, two thousand twenty-seven:

Hiring Rate	Job Rate
$161,115	$219,867

Effective April first, two thousand twenty-eight:

Hiring Rate	Job Rate
$166,754	$227,562

Effective April first, two thousand twenty-nine:

Hiring Rate	Job Rate
$171,757	$234,389

Effective April first, two thousand thirty:

Hiring Rate	Job Rate
$176,910	$241,421

b. The salary schedule for superintendents of correctional facilities with an incarcerated individual population capacity of fewer than four hundred incarcerated individuals shall be as follows:

Effective April first, two thousand twenty-six:

Hiring Rate	Job Rate
$120,471	$152,240

Effective April first, two thousand twenty-seven:

Hiring Rate	Job Rate
$125,290	$158,330

Effective April first, two thousand twenty-eight:

Hiring Rate	Job Rate
$129,675	$163,872

Effective April first, two thousand twenty-nine:

Hiring Rate	Job Rate
$133,565	$168,788

Effective April first, two thousand thirty:

Hiring Rate	Job Rate
$137,572	$173,852

2. Employees to whom the provisions of this section apply whose basic annual salary is less than the job rate herein specified may receive periodic performance advancement payments based on periodic evaluations of work performance in accordance with rules and regulations promulgated by the director of the budget; provided, however, that in no event may such a payment result in a basic annual salary in excess of the job rate of such grade. Such payments shall be part of the employee's basic annual salary. Payments pursuant to this subdivision shall commence no earlier than July first, nineteen hundred seventy-nine.

3. Employees to whom the provisions of this section apply whose basic annual salary at the time of the performance award evaluation equals or exceeds the job rate of the salary schedule of their positions may receive performance award payments in accordance with rules and regulations promulgated by the director of the budget. Such payments shall be lump sum payments and shall be in addition to and shall not be part of the employee's basic annual salary; provided, however, that any amounts payable pursuant to this subdivision shall be included as compensation for retirement purposes.

4. The salary herein provided shall be in lieu of all other compensation or emolument, benefit of entitlement of office of the office of superintendent except as may be necessarily incidental to the discharge of the duties of such office or provided by law.

§ 20. Library. A library shall be provided in the department containing the leading books on parole, probation and other correctional activities, together with reports and other documents on correlated topics of criminology and social work.

§ 21. Acquisition of real property by purchase and acquisition. 1. The commissioner, when an appropriation therefor has been made by the legislature, may acquire any real property which he may deem necessary for the purposes of the department by purchase or pursuant to the eminent domain procedure law. Title to any such real property shall be taken in the name of and be vested in the people of the state of New York; provided, however, that no real property shall be so acquired by purchase unless the title thereto shall be approved by the attorney general.

2. Whenever title to real property is to be acquired pursuant to the eminent domain procedure law the commissioner shall cause to be made by the state department of transportation an accurate acquisition map as so provided in said law.

3. On the approval of such map by the commissioner, the original tracing of such map shall, pursuant to the eminent domain procedure law, be filed in the main office of the department.

4. If the commissioner shall determine, prior to the filing of such map in the office of the clerk or register of the county, that changes, alterations or modifications of such map as filed in the main office of the department should be made, he or she shall, subject to the provisions of article two of the eminent domain procedure law, if applicable, direct the preparation by the department of transportation of an amended map. On the approval of such amended map by the commissioner, it shall be filed in the main office of the department and the amended map shall thereupon in all respects and for all purposes supersede the map previously filed.

5. If the commissioner shall determine, prior to the filing of a copy of such acquisition map in the office of the county clerk or register as provided in section four hundred two of the eminent domain procedure law, that such map should be withdrawn, he or she may file a certificate

of withdrawal in the offices of the department and of the department of law. Upon the filing of such certificate of withdrawal, the map to which it refers shall be cancelled and all rights thereunder shall cease and determine.

6. The commissioner shall deliver to the attorney general a copy of such acquisition map, whereupon it shall be the duty of the attorney general to advise and certify to the commissioner the names of the owners of the property, easements, interests or rights described in the said acquisition map, including the owners of any right, title or interest therein, pursuant to the requirements of section four hundred three of the eminent domain procedure law.

7. If, at or after the vesting of title to such property in the people of the state of New York, as provided for in the eminent domain procedure law, the commissioner shall deem it necessary to cause the removal of an owner or occupant from any real property so acquired, he may cause such owner or occupant to be removed therefrom by proceeding in accordance with section four hundred five of the eminent domain procedure law. The proceeding shall be brought in the name of the commissioner as agent of the state and the attorney general shall represent the petitioner in the proceedings. No execution shall issue for costs, if any, awarded against the state or the commissioner, but they shall be part of the costs of the acquisition of the real property and be paid in like manner. Proceedings may be brought separately against one or more of the owners or occupants of any such property, or one proceeding may be brought against all or several of the owners or occupants of any or all such property within the territorial jurisdiction of the same court, justice or judge; judgment shall be given for immediate removal of persons defaulting in appearance or in answering, or withdrawing their answers, if any, without awaiting the trial or decision of issues raised by contestants, if any.

8. Upon making any agreement provided for in section three hundred four of the eminent domain procedure law, the commissioner shall deliver to the comptroller such agreement and a certificate stating the amount due such owner or owners thereunder on account of such appropriation of

his or their property and the amounts so fixed shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of such real property, but not until there shall have been filed with the comptroller a certificate of the attorney general showing the person or persons claiming the amount so agreed upon to be legally entitled thereto.

9. Application for reimbursement of incidental expenses as provided in section seven hundred two of the eminent domain procedure law shall be made to the commissioner upon forms prescribed by him and shall be accompanied by such information and evidence as the commissioner may require. Upon approval of such application, the commissioner shall deliver a copy thereof to the comptroller together with a certificate stating the amount due thereof, and the amount so fixed shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the obtaining of title to property under this section.

10. The commissioner, with the approval of the director of the budget, shall establish and may from time to time amend rules and regulations authorizing the payment of actual reasonable and necessary moving expenses of occupants of property acquired pursuant to this section; of actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not exceeding an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the commissioner; and actual reasonable expenses in searching for a replacement business or farm; or in hardship cases for the advance payment of such expenses and losses. For the purposes of making payment of such expenses and losses only the term "business" means any lawful activity conducted primarily for assisting in the purchase, sale, resale, manufacture, processing or marketing of products, commodities, personal property or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted. Such rules and regulations may further define the terms used in this subdivision. In lieu of such actual reasonable and necessary moving expenses, any such displaced owner or tenant of residential property may elect to accept a

moving expense allowance, plus a dislocation allowance, determined in accordance with a schedule prepared by the commissioner and made a part of such rules and regulations. In lieu of such actual, reasonable and necessary moving expenses, any such displaced owner or tenant of commercial property who relocates or discontinues his business or farm operation may elect to accept a fixed relocation payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall be not less than two thousand five hundred dollars nor more than ten thousand dollars. In the case of a business, no such fixed relocation payment shall be made unless the commissioner finds and determines that the business cannot be relocated without a substantial loss of its existing patronage, and that the business is not part of a commercial enterprise having at least one other establishment, which is not being acquired by the state or the United States, which is engaged in the same or similar business. In the case of a business which is to be discontinued but for which the findings and determinations set forth above cannot be made, the commissioner may prepare an estimate of what the actual reasonable and necessary moving expenses, exclusive of any storage charges, would be if the business were to be relocated and enter into an agreed settlement with the owner of such business for an amount not to exceed such estimate in lieu of such actual reasonable and necessary moving expenses. Application for payment under this subdivision shall be made to the commissioner upon forms prescribed by him and shall be accompanied by such information and evidence as the commissioner may require. Upon approval of such application, the commissioner shall deliver a copy thereof to the comptroller together with a certificate stating the amount due thereunder, and the comptroller from moneys appropriated for the acquisition of property under this section. As used in this subdivision the term "commercial property" shall include property owned by an individual, family, partnership, corporation, association or a nonprofit organization and includes a farm operation. As used in this subdivision the term "business" means any lawful activity, except a farm operation, conducted primarily for the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property; for the sale of services to the public; or by a non-profit organization.

11. Authorization is hereby given to the commissioner to make supplemental relocation payments, separately computed and stated, to displaced owners and tenants of residential property acquired pursuant to this section who are entitled thereto, as determined by him. The commissioner, with the approval of the director of the budget, may establish and from time to time amend rules and regulations providing for such supplemental relocation payments. Such rules and regulations may further define the terms used in this subdivision. In the case of property acquired pursuant to this section which is improved by a dwelling actually owned and occupied by the displaced owner for not less than one hundred eighty days immediately prior to initiation of negotiations for the acquisition of such property, such payment to such owner shall not exceed fifteen thousand dollars. Such payment shall be the amount, if any, which, when added to the acquisition payment equals the average price, established by the commissioner on a class, group or individual basis, required to obtain a comparable replacement dwelling that is decent, safe and sanitary to accommodate the displaced owner, reasonably accessible to public services and places of employment and available on the private market, but in no event shall such payment exceed the difference between acquisition payment and the actual purchase price of the replacement dwelling. Such payment shall include an amount which will compensate such displaced owner for any increased interest costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired pursuant to this section was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred eighty days prior to the initiation of negotiations for the acquisition of such dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the

replacement dwelling is located. Any such mortgage interest differential payment shall, notwithstanding the provisions of section twenty-six-b of the general construction law, be in lieu of and in full satisfaction of the requirements of such section. Such payment shall include reasonable expenses incurred by such displaced owner for evidence of title, recording fees and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses. Such payment shall be made only to a displaced owner who purchases and occupies a replacement dwelling which is decent, safe and sanitary within one year subsequent to the date on which he is required to move from the dwelling acquired pursuant to this section or the date on which he receives from the state final payment of all costs of the acquired dwelling, whichever occurs later, except advance payment of such amount may be made in hardship cases. In the case of property acquired pursuant to this section from which an individual or family, not otherwise eligible to receive a payment pursuant to the above provisions of this subdivision, is displaced from any dwelling thereon which has been actually and lawfully occupied by such individual or family for not less than ninety days immediately prior to the initiation of negotiations for the acquisition of such property, such payment to such individual or family shall not exceed four thousand dollars. Such payment shall be the amount which is necessary to enable such individual or family to lease or rent for a period not to exceed four years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities and reasonably accessible to his place of employment, but shall not exceed four thousand dollars, or to make the down payment, including reasonable expenses incurred by such individual or family for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses, on the purchase of, a decent, safe and sanitary dwelling of standards adequate to accommodate such individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities, but shall not exceed four thousand dollars, except if such amount exceeds two thousand dollars, such person must equally match any such amount in excess of two thousand dollars, in making the down payment. Such payments may be made in installments as determined by the commissioner. Application for payment under this subdivision shall be made to the commissioner upon forms prescribed by him and shall be accompanied by such information and evidence as the commissioner may require. Upon approval of such application, the commissioner shall deliver a copy thereof to the comptroller, together with a certificate stating the amount due thereunder, and the amount so fixed shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of property under this section.

12. The owner of any real property so acquired may present to the court of claims pursuant to section five hundred three of the eminent domain procedure law a claim for the value of such property acquired and for legal damages caused by such appropriation, as provided by law for the filing of claims with the court of claims. Awards and judgments of the court of claims shall be paid in the same manner as awards and judgments of that court for the acquisition of lands generally and shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of such real property.

13. If the commissioner shall determine subsequent to the acquisition of a temporary easement in any real property that the purposes for which such easement right was acquired have been accomplished and that the exercise of such easement is no longer necessary, he shall make his certificate that the exercise of such easement is no longer necessary and that such easement right is therefore terminated, released and extinguished. The commissioner shall cause such certificate to be filed in the office of the department of state and upon such filing all rights acquired by the state in such property shall cease and determine. The commissioner shall cause a certified copy of such certificate as so filed in the office of the department of state to be mailed to the owner of the property affected, as certified by the attorney general, if the place of residence of such owner is known or can be ascertained by a reasonable effort and such commissioner shall cause a further certified copy of such certificate to be filed in the office of the recording officer of each county in which the property affected or any part thereof is situated. On the filing of such certified copy of such

certificate with such recording officer, it shall be his duty to record the same in his office in the books used for recording deeds and to index the same against the name of the people of the state of New York as grantor.

§ 22. Institution officers not to be interested in institution contracts. A commissioner of correction, superintendent or other officer or employee, employed at any of the institutions in the department who:

1. Shall be directly or indirectly interested in any contract, purchase or sale, for, by, or on account of such institution; or,

2. Accepts a present from a contractor or contractor's agent, directly or indirectly, or employs the labor of an incarcerated individual or another person employed in such institution on any work for the private benefit of such commissioner, superintendent, officer or employee, is guilty of a misdemeanor.

§ 22-a. Qualification for employment as a correction officer. No person, on or after the effective date of this section, may be appointed to the position of a correction officer in any institution in the department who has been convicted of a felony or of any offense in any other jurisdiction which if committed in this state would constitute a felony. The commissioner may in his discretion, bar the appointment of a person, on or after the effective date of this section, to the position of correction officer in any institution in the department, who has been convicted of a misdemeanor or of any offense in any other jurisdiction which if committed in this state would constitute a misdemeanor where he has determined that the employment of such person is not in the best interest of the department. Notwithstanding the foregoing provisions of this section, no person shall be disqualified pursuant to this section unless he shall have first been furnished a written statement of the reasons for such disqualification and afforded an opportunity by the commissioner, or his designee, to make an explanation and to submit facts in opposition thereto.

§ 22-b. Disclosure of video footage related to the death of incarcerated individuals involving correction officers or peace officers employed by the department. 1. Definition. As used in this section the term "video footage" shall include, but not be limited to, recordings from fixed or stationary cameras, body-worn cameras, handheld devices, or any other recording equipment maintained or used by correctional staff within an institution or correctional facility.

2. Duty to disclose. The department shall disclose to the attorney general's office of special investigation any video footage that such office deems to be related to the death of an incarcerated individual. This shall include any case in which the attorney general's office of special investigation determines the death involves a correction officer or peace officer employed by the department.

3. Timeframe for disclosure. The commissioner or commissioner's designee shall make reasonable good faith efforts to ascertain the existence of and obtain any relevant video footage or audio recordings that existed or that may be related to the death and shall disclose such video footage or audio records within seventy-two hours of the occurrence of the death. If the commissioner or commissioner's designee learns of additional video footage or audio recordings which are related to the death, the commissioner or commissioner's designee shall disclose such recordings within twenty-four hours of such discovery and provide the circumstances surrounding the discovery of such records to the attorney general's office of special investigations.

4. Redactions and exceptions. No redactions shall be made to the video footage before it is disclosed to the attorney general's office of special investigation.

§ 23. Transfer of incarcerated individuals from one correctional facility to another; treatment in outside hospitals. 1. The commissioner shall have the power to transfer incarcerated individuals from one correctional facility to another. Whenever the transfer of incarcerated individuals from one correctional facility to another shall be ordered by the commissioner, the superintendent of the facility from which the incarcerated individuals are transferred shall take immediate steps to make the transfer. The transfer shall be in accordance with rules and regulations promulgated by the department for the safe delivery of such incarcerated individuals to the designated facility. Within twenty-four hours of arriving at the facility to which an incarcerated individual is transferred, he or she shall be allowed to make at least one personal phone call, except when to do so would create an unacceptable risk to the safety and security of incarcerated individuals or staff. If security precautions prevent the incarcerated individual from making such call, a staff member designated by the superintendent of the facility shall make a call to a person of the incarcerated individual's choice unless the incarcerated individual declines to have such a call made.

2. The commissioner, in his or her discretion, may by written order permit incarcerated individuals to receive medical diagnosis and treatment in outside hospitals, upon the recommendation of the superintendent or director that such outside treatment or diagnosis is necessary by reason of inadequate facilities within the institution. Such incarcerated individuals shall remain under the jurisdiction and in the custody of the department while in said outside hospital and said superintendent or director shall enforce proper measures in each case to safely maintain such jurisdiction and custody.

3. The cost of transporting incarcerated individuals between facilities and to outside hospitals shall be paid from funds appropriated to the department for such purpose.

§ 24. Civil actions against department personnel. 1. No civil action shall be brought in any court of the state, except by the attorney general on behalf of the state, against any officer or employee of the department, which for purposes of this section shall include members of the state board of parole, in his or her personal capacity, for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the discharge of the duties by such officer or employee.

2. Any claim for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the discharge of the duties of any officer or employee of the department shall be brought and maintained in the court of claims as a claim against the state.

3. This section shall apply with respect to claims arising on or after the effective date of this section.

§ 24-a. Actions against persons rendering health care services at the request of the department; defense and indemnification. The provisions of section seventeen of the public officers law shall apply to any person holding a license to practice a profession pursuant to article one hundred thirty-one, one hundred thirty-one-B, one hundred thirty-two, one hundred thirty-three, one hundred thirty-six, one hundred thirty-seven, one hundred thirty-nine, one hundred forty-one, one hundred forty-three, one hundred fifty-six or one hundred fifty-nine of the education law, who is rendering or has rendered professional services authorized under such license while acting at the request of the department or a facility of the department in providing health care and treatment or professional consultation to incarcerated individuals of state correctional facilities, or to the infant children of incarcerated individuals while such infants are cared for in facility nurseries pursuant to section six hundred eleven of this chapter, without regard to whether such health care and treatment or professional consultation is provided within or without a correctional facility.

§ 25. Mutual assistance by institutional and local fire fighting facilities. In cooperation with the development and operation of plans for mutual aid in cases of fire and other public emergencies, the warden or superintendent of any state institution in the department, with the approval of the commissioner, may authorize the fire department of the institution to furnish aid to such territory surrounding the institution as may be practical in cases of fire and such emergencies, having due regard to the safety of the incarcerated individuals and property of the institution and to engage in practice and training programs in connection with the development and operation of such mutual aid plans. Any lawfully organized fire-fighting forces or firefighters from such surrounding territory may enter upon the grounds of the institution to furnish aid in cases of fire and such emergencies.

§ 26. Establishment of commissaries or canteens in correctional institutions. The commissioner may authorize the head of any institution in the department to establish a commissary or a canteen in such institution for the use and benefit of incarcerated individuals. The moneys received by the head of the institution as profits from the sales of the commissary or canteen shall be deposited in a special fund to be known as the commissary or canteen fund and such funds shall be used for the general purposes of the institution subject to the provisions of section fifty-three of the state finance law.

§ 29. Department statistics. 1. The department shall continue to collect, maintain, and analyze statistical and other information and data with respect to persons subject to the jurisdiction of the department, including but not limited to: (a) the number of such persons: placed in the custody of the department, assigned to a specific department program, accorded community supervision and declared delinquent, recommitted to a state correctional institution upon revocation of community supervision, or discharged upon maximum expiration of sentence; (b) the criminal history of such persons; (c) the social, educational, and vocational circumstances of any such persons; (d) the institutional and community supervision programs and the behavior of such persons; and, (e) the military background and circumstances, if such person served in the United States armed forces. Provided, however, in the event any statistical information on the ethnic background of the incarcerated individual population of a correctional facility or facilities is collected by the department, such statistical information shall contain, but not be limited to, the following ethnic categories: (i) Caucasian; (ii) Asian; (iii) American Indian; (iv) Afro-American/Black; and (v) Spanish speaking/Hispanic which category shall include, but not be limited to, the following subcategories consisting of: (1) Puerto Ricans; (2) Cubans; (3) Dominicans; and (4) other Hispanic nationalities.

2. The commissioner shall make rules as to the privacy of records, statistics and other information collected, obtained and maintained by the department, its institutions or the board of parole and information obtained in an official capacity by officers, employees or members thereof.

3. The commissioner shall have access to records and criminal statistics collected by the division of criminal justice services and the commissioner of criminal justice services shall have access to records and criminal statistics collected by the department of corrections and community supervision, as the commissioner of corrections and community supervision and the commissioner of criminal justice services shall mutually determine.

4. (a) The commissioner shall provide an annual report to the legislature on the staffing of correction officers and correction sergeants in state correctional facilities. Such report shall include, but not be limited to the following factors: the number of security posts on the current plot plan for each facility that have been closed on a daily basis, by correctional facility security classification (minimum, medium and maximum); the number of security positions eliminated by correctional facility since two thousand compared to the number of incarcerated individuals incarcerated in each such facility; a breakdown by correctional facility security classification (minimum, medium, and maximum) of the staff hours of overtime worked, by year since two thousand and the annual aggregate costs related to this overtime. In addition, such report shall be delineated by correctional facility security classification, the annual number of security positions eliminated, the number of closed posts and amount of staff

hours of overtime accrued as well as the overall overtime expenditures that resulted. Such report shall be provided to the chairs of the senate finance, assembly ways and means, senate crime and corrections and assembly correction committees, and posted on the department's website, annually by February first.

(b) Such report shall also include but not be limited to: the total number of correctional facilities in operation which are maintained by the department, the security level of each facility, the number of beds at each facility as of December thirty-first of the prior year, as classified by the department, and the number of empty beds, if any, by such classification as of such date.

ARTICLE 3

STATE COMMISSION OF CORRECTION

§ 40. Definitions. As used in this article the following terms have the following meanings:

1. "Commission" means the state commission of correction.

2. "Local correctional facility" means any jail, penitentiary, state, county or municipal lockup, court detention pen, hospital prison ward or specialized secure juvenile detention facility for older youth.

3. "Correctional facility" means any institution operated by the state department of corrections and community supervision, any local correctional facility, or any place used, pursuant to a contract with the state or a municipality, for the detention of persons charged with or convicted of a crime, or, for the purpose of this article only, a secure facility operated by the office of children and family services.

4. "Municipal official" means (a) the sheriff or, where a local correctional facility is under the jurisdiction of a county department, the head of such department, and clerk of the board of supervisors, in the case of a county jail; (b) the sheriff or other officer having custody or administrative jurisdiction and the clerk of the board of supervisors, in the case of a county penitentiary; (c) the clerk of the board of supervisors in the case of a county lockup; (d) the mayor and the city clerk, in the case of a city jail or lockup; (e) the supervisor and town clerk, in the case of a town lockup; (f) the mayor and village clerk, in the case of a village lockup; (g) the clerk of the board of supervisors of the county wherein located and the officer having custody or control, in the case of a court detention pen or a hospital prison ward.

5. "Board" means the correction medical review board.

6. "Council" means the citizen's policy and complaint review council.

§ 41. State commission of correction; organization. 1. (a) There shall be within the executive department a state commission of correction. It shall consist of five persons, to be appointed by the governor by and with the consent of the senate.

(b) At a minimum, one member appointed shall be a person formerly incarcerated in a correctional facility located in New York and one member appointed shall have one or more of the following qualifications: licensure as a healthcare professional authorized to practice in New York state; licensure as an attorney authorized to practice in this state who has a professional background in indigent criminal defense or prisoner's rights litigation or experience as a legal policy professional who has professional experience related to the rights of incarcerated individuals; or professional experience in another field deemed relevant to the promotion of an efficient, humane, and lawful correctional system. Two of the members shall be part-time.

(c) The governor shall designate one of the appointed full-time members as chairperson to serve as such at the pleasure of the governor. The part-time members appointed to the commission shall receive a per diem of five hundred dollars for work actually performed not to exceed fifty thousand dollars in any one calendar year. The full-time members shall devote full time to their duties and shall hold no other salaried public position.

2. The members shall hold office for terms of five years. No member shall serve for more than ten years. Any member of the commission may be removed by the governor for cause after an opportunity to be heard in such member's defense.

3. Any member chosen to fill a vacancy created other than by expiration of term shall be appointed for the unexpired term of the member whom such new member is to succeed. Vacancies caused by expiration of term or otherwise shall be filled in the same manner as original appointments.

§ 42. Citizen's policy and complaint review council; organization; functions, powers and duties. (a) 1. There shall be within the commission a citizen's policy and complaint review council. It shall consist of nine persons, six of whom shall be appointed by the governor, by and with the advice and consent of the senate. One person so appointed shall have served in the armed forces of the United States in any foreign war, conflict or military occupation, who (i) was discharged therefrom under other than dishonorable conditions, or (ii) has a qualifying condition, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, or (iii) is a discharged LGBT veteran, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, or shall be a duly licensed mental health professional who has professional experience or training with regard to post-traumatic stress syndrome. One person so appointed shall be an attorney admitted to practice in this state. One person so appointed shall be a former incarcerated individual of a correctional facility. One person so appointed shall be a former correction officer. One person so appointed shall be a former resident of a division for youth secure center or a health care professional duly licensed to practice in this state. One person so appointed shall be a former employee of the office of children and family services who has directly supervised youth in a secure residential center operated by such office. In addition, the part-time commission members appointed shall serve on the council. Lastly, the governor shall designate one of the full-time members other than the chair of the commission as chair of the council to serve as such at the pleasure of the governor.

2. The six appointed members of the council shall hold office for five years. Any appointed member of the council may be removed by the governor for cause after an opportunity to be heard in their defense.

3. Any member chosen to fill in a vacancy created other than by expiration of term shall be appointed for the unexpired term of the succeeded member. Vacancies caused by the expiration of term or otherwise shall be filled in the same manner as original appointments.

4. The members of the council other than the commission members shall receive no compensation for their services but each member other than the commission members shall be entitled to receive actual and necessary expenses incurred in the performance of council duties.

5. No appointed member of the council shall qualify or enter upon the duties of office, or remain therein, while an officer or employee of the department of corrections and community supervision or any correctional facility or is in a position to exercise administrative supervision over any correctional facility. The council shall have such staff as shall be necessary to assist it in the performance of its duties within the amount of the appropriation therefor as determined by the chair of the

commission.

6. Notwithstanding any provision of this section to the contrary, any member of the council serving on the effective date of this paragraph may continue to serve until such member resigns, is removed, or otherwise vacates such office.

2. The nine appointed members of the council shall hold office for five years; provided that of the seven members first appointed, two shall be appointed for a term of one year, two shall be appointed for a term of two years, one shall be appointed for a term of three years, one shall be appointed for a term of four years and one shall be appointed for a term of five years from January first next succeeding their appointment. Any appointed member of the council may be removed by the governor for cause after an opportunity to be heard in his defense.

3. Any member chosen to fill in a vacancy created other than by expiration of term shall be appointed for the unexpired term of the succeeded member. Vacancies caused by the expiration of term or otherwise shall be filled in the same manner as original appointments.

4. The members of the council other than the chair shall receive no compensation for their services but each member other than the chair shall be entitled to receive actual and necessary expenses incurred in the performance of council duties.

5. No appointed member of the council shall qualify or enter upon the duties of office, or remain therein, while an officer or employee of the department of corrections and community supervision or any correctional facility or is in a position to exercise administrative supervision over any correctional facility. The council shall have such staff as shall be necessary to assist it in the performance of its duties within the amount of the appropriation therefor as determined by the chair of the commission.

(b) The council and each member thereof shall have the following functions, powers and duties:

1. To investigate, review or take such other action as shall be deemed necessary or proper with respect to complaints or grievances regarding any local correctional facility or part thereof as shall be called to its attention in writing.

2. To have access, at any and all times, to any local correctional facility or part thereof and to all books, records, and data pertaining to any local correctional facility which are deemed necessary for carrying out the council's functions, powers and duties.

3. To obtain from administrators, officers or employees of any local correctional facility any information deemed necessary for the purpose of carrying out its functions, powers and duties.

4. To request and receive temporary office space in any local correctional facility for the purpose of carrying out its functions, powers and duties.

5. To report periodically to the commission and, where appropriate, to make such recommendations as are necessary to fulfill the purposes of this article to the commission and to the administrator of any local correctional facility.

(c) In addition to the functions, powers and duties prescribed by subdivision (b) of this section, the council shall

1. Advise and assist the commission in developing policies, plans and programs for improving the commission's performance of its duties and for coordinating the efforts of the commission and of correctional officials to improve conditions of care, treatment, safety, supervision, rehabilitation, recreation, training and education in correctional facilities. Such advice and assistance shall minimally consist of an annual report of the council to the commission;

2. Foster and promote research and study in areas of correctional policy and program development deemed necessary or desirable by the commission or the council;

3. Meet at least once per calendar month at a time and place designated by the chair of the council.

§ 43. Correction medical review board; organization. 1. There shall be within the commission a correction medical review board. It shall consist of six persons to be appointed by the governor by and with the advice and consent of the senate. In addition, the part-time commission members shall serve on the board. Lastly, the governor shall designate the full-time member other than the chair of the commission and the chair of the council as chair of the board to serve as such at the pleasure of the governor. Of the appointed members of the board one shall be a physician duly licensed to practice in this state; one shall be a physician duly licensed to practice in this state and a board certified forensic pathologist; one shall be a physician duly licensed to practice in this state and shall be a board certified forensic psychiatrist; one shall be an attorney admitted to practice in this state; two shall be members appointed at large.

2. The six appointed members of the board shall hold office for five years; provided that of the two members first appointed, after December thirty-first, nineteen hundred eighty-seven who are not appointed to succeed any other member of the board, one shall be appointed for a term of four years and one shall be appointed for a term of five years from January first next succeeding their appointment. Any appointed member of the board may be removed by the governor for cause after an opportunity to be heard in his defense.

3. Any member chosen to fill a vacancy created other than by expiration of term shall be appointed for the unexpired term of the succeeded member. Vacancies caused by expiration of term or otherwise shall be filled in the same manner as original appointments.

4. The members of the board, other than the commission members, shall receive no compensation for their services but each member shall be entitled to receive their actual and necessary expenses incurred in the performance of their duties.

§ 44. Chair of commission. 1. The chair shall be the executive officer of the commission, the board and the council, and may serve as the chair of the board or council at any time necessitated by a commission member vacancy.

2. The chair may appoint such assistants, officers and employees, committees and consultants for the board and the council as necessary, prescribe their powers and duties, fix their compensation and provide for reimbursement of their expenses within amounts appropriated therefor.

3. The chair may, from time to time, create, abolish, transfer and consolidate bureaus and other units within the commission, the board and the council not expressly established by law as necessary for the efficient operation of the commission, the board and the council, subject to the approval of the director of the budget.

4. The chair may request and receive from any department, division, board, bureau, commission or other agency of the state or any political subdivision thereof or any public authority such assistance, information and data as will enable the commission, the board and the council properly to carry out its functions, powers and duties.

§ 45. Functions, powers and duties of the commission. The commission shall have the following functions, powers and duties:

1. Advise and assist the governor in developing policies, plans and programs for improving the administration of correctional facilities and the delivery of services therein.

2. Make recommendations to administrators of correctional facilities for improving the administration of such correctional facilities and the delivery of services therein.

3. Visit, inspect and appraise the management of correctional facilities with specific attention to matters such as safety, security, health of incarcerated individuals, sanitary conditions, rehabilitative programs, disturbance and fire prevention and control preparedness, and adherence to laws and regulations governing the rights of incarcerated individuals. Such visits, inspections and appraisals shall occur, at a minimum, annually for jails, specialized secure juvenile detention facilities for older youth, facilities operated by the department, and secure facilities operated by the office of children and family services.

4. Establish procedures to assure effective investigation of grievances of, and conditions affecting, incarcerated individuals of local correctional facilities. Such procedures shall include but not be limited to receipt of written complaints, interviews of persons, and on-site monitoring of conditions. In addition, the commission shall establish procedures for the speedy and impartial review of grievances referred to it by the commissioner. The commission shall maintain a website that allows for the submission of written complaints regarding any correctional facility, and provides the commission's address for the receipt of complaints by mail. The commission shall promulgate rules and regulations requiring correctional facilities to provide incarcerated individuals, in writing, the commission's website and mailing address.

5. Ascertain and recommend such system of employing incarcerated individuals of correctional facilities as may, in the opinion of said commission, be for the best interest of the public and of said incarcerated individuals and not in conflict with the provisions of the constitution or laws of the state relating to the employment of incarcerated individuals.

6. Promulgate rules and regulations establishing minimum standards for the review of the construction or improvement of correctional facilities and the care, custody, correction, treatment, supervision, discipline, and other correctional programs for all persons confined in correctional facilities. Such rules and regulations shall be forwarded to the governor, the temporary president of the senate and the speaker of the

assembly no later than January first, nineteen hundred seventy-six and annually thereafter.

6-a. Promulgate rules and regulations to assure that persons in custody in local correctional facilities, including persons awaiting arraignment, are furnished or have access to the type of food required by their religious dietary rules or medically prescribed diets, if any.

6-b. Promulgate rules and regulations, in consultation with the division for youth, establishing minimum standards for the care, custody, rehabilitation, treatment, supervision, discipline and other programs for correctional facilities operated by the division for youth.

7. Place such members of its staff as it deems appropriate as monitors in any local correctional facility which, in the judgment of the commission, presents an imminent danger to the health, safety or security of the incarcerated individuals or employees of such correctional facility or of the public.

8. (a) Close any correctional facility which is unsafe, unsanitary or inadequate to provide for the separation and classification of prisoners required by law or which has not adhered to or complied with the rules or regulations promulgated with respect to any such facility by the commission pursuant to the provisions of subdivision six of this section; provided, however, that before such facility may be closed due to conditions which are unsafe, unsanitary or inadequate to provide for the separation and classification of prisoners, the commission shall cause a citation to be mailed to the appropriate municipal or other official at least ten days before the return day thereof directing the responsible authorities designated to appear before such commission at the time and place set forth in the citation, and show cause why such correctional facility should not be closed. After a hearing thereon or upon the failure to appear, such commission is empowered to order such facility designated in the citation closed within twenty days, during which time the respondent authority may review such order in the manner provided in article seventy-eight of the civil practice law and rules, in the supreme court. Fifteen days after the order to close has been

served by a registered letter upon the appropriate official if no court review has been taken, and fifteen days after the order of such commission has been confirmed by the court, in case of court review, such facility designated in the order shall be closed, and it shall be unlawful to confine or detain any person therein and any officer confining or detaining any person therein shall be guilty of a class A misdemeanor.

(b) Before a correctional facility as defined in subdivision four of section two of this chapter, may be closed for a reason other than those set forth in paragraph (a) of this subdivision, the provisions of section seventy-nine-a of this chapter shall be adhered to.

10. Approve or reject plans and specifications for the construction or improvement of correctional facilities that directly affect the health of incarcerated individuals and staff, safety, or security.

12. Make an annual report to the governor and legislature concerning its work and the work of the board and the council during the preceding year, and such further interim reports to the governor, or to the governor and legislature, as it shall deem advisable, or as shall be required by the governor.

13. Accept, with the approval of the governor, as agent of the state any grant, including federal grants, or any gift for any of the purposes of this article. Any moneys so received may be expended by the commission to effectuate any purpose of this article, subject to the same limitations as to approval of expenditures and audit as are prescribed for state moneys appropriated for the purposes of this article.

14. Enter into contracts with any person, firm, corporation, municipality, or governmental agency.

15. Adopt, amend or rescind such rules and regulations as may be necessary or convenient to the performance of the functions, powers and duties of the commission.

16. Do all other things necessary or convenient to carry out its functions, powers and duties expressly set forth in this article.

* 17. Make an annual report to the governor, the chair of the assembly committee on correction and the chair of the senate committee on crime victims, crime and correction concerning incarcerated individuals confined in local correctional facilities pursuant to an agreement authorized by section five hundred-o of this chapter. Such report shall include but not be limited to the number of counties maintaining such agreements and the number of incarcerated individuals confined pursuant to such agreements.

* NB Repealed September 1, 2029

18. Assess compliance of local correctional facilities with the terms of paragraphs (h), (i), (j), (k), (l), (m), (n) and (o) of subdivision six of section one hundred thirty-seven of this chapter. The commission shall issue a public report regarding all aspects of segregated confinement and residential rehabilitation units at least annually with recommendations to local correctional facilities, the governor, the legislature, including but not limited to policies and practices regarding: (a) placement of persons; (b) special populations; (c) length of time spent in segregated confinement and residential treatment units; (d) hearings and procedures; (e) conditions, programs, services, care, and treatment; and (f) assessments, rehabilitation plans, and discharge procedures.

19. Establish standards and guidelines for a program of medication assisted treatment for incarcerated individuals in county jails and/or county correctional facilities equivalent to the program established in state correctional facilities pursuant to section six hundred twenty-six of this chapter and submit an annual report consistent with the requirements of subdivision three of such section.

§ 46. Additional functions, powers and duties of the commission. 1. The commission, any member or any employee designated by the commission must be granted access at any and all times to any correctional facility or part thereof and to all books, records, medical and substance use disorder treatment and transition services records of incarcerated individuals and data pertaining to any correctional facility deemed necessary for carrying out the commission's functions, powers and duties. The commission, any member or any employee designated by the chair may require from the officers or employees of a correctional facility any information deemed necessary for the purpose of carrying out the commission's functions, powers and duties. Commission members and employees may conduct private interviews of correctional facility officers and employees, who may be accompanied by counsel or a union representative acting on such officer or employee's behalf. Commission members and employees may also conduct private interviews of incarcerated individuals, provided that participation in such interviews shall be voluntary and the incarcerated individual may be accompanied by counsel.

2. In the exercise of its functions, powers and duties, the commission, any member, and any attorney employed by the commission is authorized to issue and enforce a subpoena and a subpoena duces tecum, administer oaths and examine persons under oath, in accordance with and pursuant to civil practice law and rules. A person examined under oath pursuant to this subdivision shall have the right to be accompanied by counsel who shall advise the person of their rights subject to reasonable limitations to prevent obstruction of, or interference with, the orderly conduct of the examination. Notwithstanding any other provision of law, a subpoena may be issued and enforced pursuant to this subdivision for the medical records of an incarcerated individual of a correctional facility, regardless of whether such medical records were made during the course of the incarcerated individual's incarceration.

3. In any case where a person in charge or control of a correctional facility or an officer or employee thereof shall fail to comply with the provisions of subdivision one, or in any case where a coroner, coroner's physician or medical examiner shall fail to comply with the provisions of subdivision six of section six hundred seventy-seven of the county law, the commission may apply to the supreme court for an order directed to such person requiring compliance therewith. Upon such application the court may issue such order as may be just and a failure to comply with

the order of the court shall be a contempt of court and punishable as such.

4. In any case where any rule or regulation promulgated by the commission pursuant to subdivision six of section forty-five of this article or the laws relating to the construction, management and affairs of any correctional facility or the care, treatment and discipline of its incarcerated individuals, are being or are about to be violated, the commission shall notify the person in charge or control of the facility of such violation, recommend remedial action, and direct such person to comply with the rule, regulation or law, as the case may be. Upon the failure of such person to comply with the rule, regulation or law the commission may apply to the supreme court for an order directed to such person requiring compliance with such rule, regulation or law. Upon such application the court may issue such order as may be just and a failure to comply with the order of the court shall be a contempt of court and punishable as such.

§ 47. Functions, powers and duties of the board. 1. The board shall have the following functions, powers and duties:

(a) Investigate and review the cause and circumstances surrounding the death of any incarcerated individual of a correctional facility.

(b) Visit and inspect any correctional facility wherein an incarcerated individual has died.

(c) Cause the body of the deceased to undergo such examinations, including an autopsy, as in the opinion of the board, are necessary to determine the cause of death, irrespective of whether any such examination or autopsy shall have previously been performed.

(d) Upon review of the cause of death and circumstances surrounding the death of any incarcerated individual, the board shall submit its report thereon to the commission and to the governor, the chair of the assembly committee on correction and the chair of the senate committee on crime victims, crime and correction and, where appropriate, make recommendations to prevent the recurrence of such deaths to the commission and the administrator of the appropriate correctional facility. The report provided to the governor, the chair of the assembly committee on correction and the chair of the senate committee on crime victims, crime and correction shall not be redacted except as otherwise required to protect confidential medical records and behavioral health records in accordance with state and federal laws, rules, and regulations.

(e) (i) Investigate and report to the commission on the condition of systems for the delivery of medical care to incarcerated individuals of correctional facilities and where appropriate recommend such changes as it shall deem necessary and proper to improve the quality and availability of such medical care. Such report and recommendation shall minimally consist of an annual report of the board to the commission.

(ii) The board shall be responsive to inquiries from the next of kin and other person designated as a representative of any incarcerated individual whose death takes place during custody in a state correctional facility regarding the circumstances surrounding the death of such incarcerated individual. Contact information for the next of kin and designated representative shall be provided by the department to the board from the emergency contact information previously provided by the incarcerated individual to the department.

2. Every administrator of a correctional facility shall immediately report to the board the death of an incarcerated individual of any such facility in such manner and form as the board shall prescribe, together with an autopsy report.

§ 48. Preference. Any action or proceeding commenced by the commission pursuant to this article shall have a preference over all other cases, except habeas corpus proceedings, pending before the court.

§ 49. Commission on prison education. There is hereby established a commission on prison education comprised of nine members who shall study and develop a plan for improving education in the state prison system. The commission on prison education shall consider and investigate the following factors when determining education improvements: the impact on an incarcerated individual's employment opportunities upon release from prison, the impact on an incarcerated individual's reintegration into society and the effectiveness in reducing recidivism. Appointments to the task force shall be made as follows: three by the governor; two by the speaker of the assembly; one by the minority leader of the assembly; two by the temporary president of the senate and one by the minority leader of the senate. The commission on prison education shall issue a report within ten months after the effective date of this section.

ARTICLE 4

ESTABLISHMENT OF CORRECTIONAL FACILITIES, COMMITMENTS TO DEPARTMENT AND CUSTODY OF INCARCERATED INDIVIDUALS

§ 70. Establishment, use and designation of correctional facilities.

1. (a) Except as provided in paragraphs (b) and (c) of this subdivision, every institution operated by the department for the

confinement of persons under sentence of imprisonment, or for the confinement of persons committed for failure to pay a fine, shall be a correctional facility.

(b) An institution operated by the department for the care and confinement of persons who have been found to be mentally defective or mentally ill by a court and who are confined in such place pursuant to an order of a court based upon such finding shall not be deemed to be a correctional facility.

(c) An institution operated by the department as a drug treatment campus, as defined in subdivision twenty of section two of this chapter and used to provide intensive drug treatment services for parolees and certain parole violators, shall not be deemed to be a correctional facility.

2. Correctional facilities shall be used for the purpose of providing places of confinement and programs of treatment for persons in the custody of the department. Such use shall be suited, to the greatest extent practicable, to the objective of assisting sentenced persons to live as law abiding citizens. In furtherance of this objective the department may establish and maintain any type of institution or program of treatment, not inconsistent with other provisions of law, but with due regard to:

(a) The safety and security of the community;

(b) The right of every person in the custody of the department to receive humane treatment; and

(c) The health and safety of every person in the custody of the department.

3. (a) The commissioner may continue to maintain, as a correctional facility, any institution operated by the department prior to May eighth, nineteen hundred seventy, and may add to or close any such place, and may establish and maintain new correctional facilities, in accordance with the needs of the department and provided expenditures for such purposes are within amounts made available therefor by appropriation; provided, however, that before the closure of any correctional facility, for reasons other than those set forth in paragraph (a) of subdivision eight of section forty-five of this

chapter, the provisions of section seventy-nine-a of this article shall be adhered to.

(b) A correctional camp or a shock incarceration correctional facility may be established by the department (i) upon land controlled and designated by the commissioner, or (ii) on land controlled and designated by the commissioner of parks, recreation and historic preservation or, in the sixth park region, by the commissioner of environmental conservation.

4. Two or more correctional facilities may be maintained or established in the same building or on the same premises so long as the incarcerated individuals of each are at all times kept separate and apart from each other except that the incarcerated individuals of one may be permitted to have contact with incarcerated individuals of the other in order to perform duties, receive therapeutic treatment, attend religious services and engage in like activities as specifically provided in the rules and regulations of the department.

5. Each correctional facility must be designated in the rules and regulations of the department and no correctional facility can be used by the department for confinement of persons unless the rules and regulations of the department specify at least the following:

(a) The name and location of the facility;

(b) Whether the facility is to be used for the confinement of males or for the confinement of females;

(c) The age range of the persons who may be confined in the facility; and

(d) The classification of the facility.

6. Correctional facilities shall be classified by the commissioner in accordance with the following types of classifications:

(a) Each facility shall be classified with respect to the type of security maintained as either a maximum, medium or minimum security facility.

(b) Each facility shall be classified with respect to the function served in accordance with one or more of the following categories: (i) reception center; (ii) residential treatment facility; (iii) detention center; (iv) correctional camp; (v) diagnostic and treatment center; (vi) general confinement facility; (vii) work release facility; (viii) shock incarceration correctional facility; (ix) alcohol and substance abuse treatment facility; (x) alcohol and substance abuse treatment correctional annex.

7. The commissioner shall have the authority to enter into leases within the amount appropriated therefor, for the purpose of maintaining or establishing any correctional facility or any adjunct thereto.

8. The commissioner is authorized to enter into contracts, within the amount appropriated therefor, with any university, social agency or qualified person to render professional services to any correctional facility.

§ 71. Persons received into the custody of the department.

1. * Persons committed to the custody of the department under an indeterminate or determinate sentence of imprisonment shall be delivered to correctional facilities designated as reception centers in the rules and regulations of the department. The commissioner may designate any correctional facility as a reception center subject, however, to the following criteria:

* NB Effective until September 1, 2027

* Persons committed to the custody of the department under an indeterminate or a reformatory sentence of imprisonment shall be delivered to correctional facilities designated as reception centers in the rules and regulations of the department. The commissioner may designate any correctional facility as a reception center subject, however, to the following criteria:

* NB Effective September 1, 2027

(a) Males and females shall not be received at the same correctional facility;

(b) Males under the age of twenty-one at the time sentence is imposed shall not be received at the same correctional facility as males who are twenty-one or over at the time sentence is imposed.

1-a. The commissioner shall ensure that each general confinement facility law library has information on international offender transfers sufficient to inform those persons who are citizens of a treaty nation of the existence of such treaties and of the means by which such persons may initiate a request for return to the person's country of citizenship for service of the sentence imposed. Such law libraries shall also contain the most recent annual Amnesty International Report published by Amnesty International describing the conditions of prisons in each treaty nation and, to the extent practicable, other materials describing such prison conditions published by the United Nations, United States Department of State or human rights organizations. In addition, to the extent practicable, such law libraries shall contain information either listing each foreign country's provisions for the reduction of the terms of confinement for penal sentences as well as the availability of incarcerated individual programs or, shall contain a list of officials in the United States Department of Justice or the embassy of the foreign country to whom an incarcerated individual may write for information. To the extent practicable, newly received incarcerated individuals who are identified as foreign nationals of treaty nations shall, as part of the reception process, be advised of the existence of such treaties and the possibility of the initiation of a transfer request.

1-b. The commissioner shall promulgate rules and regulations setting forth the procedures by which an incarcerated individual may apply to be considered for transfer to a foreign nation. The commissioner, or his designee, shall retain sole and absolute authority to approve or disapprove an incarcerated individual's application for transfer. Nothing herein shall be construed to confer upon an incarcerated individual a right to be transferred to a foreign nation. Notwithstanding any other law, rule or regulation to the contrary, no incarcerated individual application for transfer shall be processed unless the incarcerated individual has first indicated his willingness and desire in writing, on a form prescribed by the commissioner, to be considered for transfer to the foreign nation. Such form shall also contain a copy of the incarcerated individual's most recent legal date computation printout indicating the term or aggregate term of the sentence originally imposed and the release dates resulting therefrom. If a request for transfer is approved by the commissioner or his designee, facility staff shall assist in the preparation and submission of all materials and forms necessary to effectuate the person's request for transfer to the United States Department of Justice for purposes of finalization of the transfer process, including verification proceedings before a United States District Court Judge, United States magistrate or other appointed United States official to assure and document the incarcerated individual's voluntary request for transfer.

1-c. For purposes of this section, the term "treaty nation" means a foreign country under treaty that provides for the voluntary transfer of persons on the execution of penal sentences entered into by the government of the United States with foreign countries.

2. Persons returned to the custody of the department as parole or conditional release violators shall be delivered to institutions designated in the rules and regulations of the department.

3. Persons who are committed, transferred, certified to or placed in the care or custody of the department as mental defectives shall be delivered to a special institution maintained for the care, treatment, training and custody of mental defectives in accordance with article seventeen of this chapter.

4. Persons who are committed, transferred, certified to or placed in the care or custody of the department while mentally ill shall be delivered to a special institution maintained for the care, treatment and custody of the mentally ill in accordance with article sixteen of this chapter.

5. The commissioner of correction shall file copies of written orders with the clerk of each court having jurisdiction to commit persons to the custody of the department designating the institutions to which persons committed by such court shall be delivered. Such orders may be amended or superseded by the commissioner from time to time and any change shall become effective immediately upon receipt by the clerk of

the court.

6. A commitment to a specified institution in the department, rather than to the custody of the department, which is valid in all other respects shall not be void for such reason but shall be deemed a commitment to the custody of the department and the person so committed shall be conveyed to the proper institution as prescribed by this section.

7. Whenever the department receives information that a person committed to the department is a social services recipient and a certificate of conviction and the term of the sentence imposed has not previously been delivered by the sentencing court to the local commissioner of social services pursuant to section 380.80 of the criminal procedure law, the department shall deliver the certificate of conviction and provide notification of the sentence imposed to the commissioner of social services. Such commissioner shall deliver the certificate of conviction and the term of sentence imposed to the appropriate local commissioner of social services.

7-a. Whenever the department receives information that a person committed to the department is a medicare part B recipient, the department shall provide to such person information regarding termination of medicare part B coverage for the duration of incarceration.

8. (a) In each year in which the federal decennial census is taken but in which the United States bureau of the census does not implement a policy of reporting incarcerated persons at each such person's residential address prior to incarceration, the department of corrections and community supervision shall by September first of that same year deliver to the legislative task force on demographic research and reapportionment the following information for each incarcerated person subject to the jurisdiction of the department and located in this state on the date for which the decennial census reports population:

(i) A unique identifier, not including the name, for each such person;

(ii) The street address of the correctional facility in which such person was incarcerated at the time of such report;

(iii) The residential address of such person prior to incarceration (if any); and

(iv) Any additional information as the task force may specify pursuant to law.

(b) The department shall provide the information specified in paragraph (a) of this subdivision in such form as the legislative task force on demographic research and reapportionment shall specify.

§ 71-a. Transitional accountability plan. Upon admission of an incarcerated individual committed to the custody of the department under an indeterminate or determinate sentence of imprisonment, the department shall develop a transitional accountability plan. Such plan shall be a comprehensive, dynamic and individualized case management plan based on the programming and treatment needs of the incarcerated individual. The purpose of such plan shall be to promote the rehabilitation of the incarcerated individual and their successful and productive reentry and reintegration into society upon release. To that end, such plan shall be used to prioritize programming and treatment services for the incarcerated individual during incarceration and any period of community supervision. The commissioner may consult with the office of mental health, the office of alcoholism and substance abuse services, the board of parole, the department of health, and other appropriate agencies in the development of transitional case management plans.

§ 72. Confinement of persons by the department. 1. Except as otherwise provided in this section, all persons committed, transferred, certified to or placed in the care or custody of the department shall be confined in institutions maintained by the department until paroled, conditionally released, transferred to the care of another agency or released or discharged in accordance with the law.

2. The commissioner, or the superintendent or director of an institution in which an incarcerated individual is confined, may permit an incarcerated individual to be taken, under guard, to any place or for

any purpose authorized by law, and the commissioner must provide for delivery of an incarcerated individual, under guard, to any place where his presence is required pursuant to an order of a court that has authority to require his presence.

2-a. The commissioner, superintendent, or director of an institution in which an incarcerated individual is confined, may permit an incarcerated individual, wishing to do so, to leave the institution under guard for the purpose of performing volunteer labor or services when in the public interest upon the threat or occurrence of a natural disaster, including but not limited to flood, earthquake, hurricane, landslide or fire. An incarcerated individual may also be permitted to leave the institution under guard to voluntarily perform work for a nonprofit organization pursuant to this subdivision. As used in this subdivision, the term "nonprofit organization" means an organization operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

2-b. The commissioner, or his designee as authorized by the commissioner, may permit an incarcerated individual to be taken under guard to any place to participate in an industrial training program.

3. The superintendent or director of an institution may permit incarcerated individuals to leave the institution for the purpose of performing maintenance work or farm work, or any other work necessary or appropriate for the upkeep, operations or business of the institution or the department.

4. Any incarcerated individual who is confined in a correctional facility and who is eligible for parole or who will become eligible for parole within two years or who has one year or less remaining to be served under his or her sentence may be transferred by the commissioner to a correctional camp and may be permitted, by the superintendent, to leave the camp to engage in conservation or forestry work or for any purpose permitted under subdivisions two, two-a, two-b and three of this section.

* 5. An incarcerated individual may be permitted to leave the institution to participate in a temporary release program in accordance with the provisions of article twenty-six of this chapter.

* NB Effective until September 1, 2027

* 5. An incarcerated individual of a work release facility may be permitted to leave the facility to participate in a work release program in accordance with the provisions of article twenty-six of this chapter.

* NB Effective September 1, 2027

6. An incarcerated individual of a residential treatment facility may be permitted to leave such facility in accordance with the provisions of section seventy-three of this article.

7. An incarcerated individual of a shock incarceration correctional facility may be permitted to leave the facility to participate in programs in accordance with the provisions of article twenty-six-A of this chapter.

8. In any case where the decision to permit an incarcerated individual to leave an institution is made by a person other than the commissioner or a deputy commissioner of correction such action and the manner in which it is carried out shall be in strict accordance with the rules and regulations of the department. Such rules and regulations may restrict or limit the authority of the superintendent or director in any manner deemed advisable by the commissioner.

9. The provisions of this section shall not be construed in such manner as to be in conflict with any provision of law that specifically provides for circumstances under which incarcerated individuals may be permitted to leave institutions.

*** § 72-a. Community treatment facilities.** 1. Transfer of eligible incarcerated individual. Notwithstanding the provisions of section seventy-two of this chapter, any incarcerated individual confined in a correctional facility who is an "eligible incarcerated individual" as defined by subdivision two of section eight hundred fifty-one of this chapter and has been certified by the office of alcoholism and substance abuse services as being in need of substance abuse treatment and rehabilitation may be transferred by the commissioner to a community treatment facility.

2. Designation of facilities. A community treatment facility shall be designated by the commissioner of the office of alcoholism and substance abuse services and the commissioner. Such facility shall be operated by a provider or sponsoring agency that has provided approved residential substance abuse treatment services for at least two years duration.

3. Operating standards. The commissioner, after consultation with the commissioner of the office of alcoholism and substance abuse services, shall promulgate rules and regulations which provide for minimum standards of operation, including but not limited to the following:

(a) provision for adequate security and protection of the surrounding community;

(b) adequate physical plant standards;

(c) provisions for adequate program services, staffing, and record keeping; and

(d) provision for the general welfare of the incarcerated individuals.

4. Community supervision. The department shall provide for the provision of community supervision services. All incarcerated individuals residing in a community treatment facility shall be assigned to parole officers for supervision. Such parole officers shall be responsible for providing such supervision.

5. Reports. The department and the division of substance abuse services shall jointly issue quarterly reports including a description of those facilities that have been designated as community treatment facilities, the number of incarcerated individuals confined in each facility, a description of the programs within each facility, and the number of absconders, if any, as well as the nature and number of re-arrests, if any, during the individual's period of community supervision. Copies of such reports, as well as copies of any inspection report issued by the department or the commission of correction shall be

sent to the director of the budget, the chairman of the senate finance committee, the chairman of the senate crime and correction committee, the chairman of the assembly ways and means committee and the chairman of the assembly committee on codes.

6. Reimbursement. (a) The commissioner, in consultation with the commissioner of the office of alcoholism and substance abuse services, shall enter into an agreement with the office of alcoholism and substance abuse services whereby the office of alcoholism and substance abuse services will contract with community treatment facilities for provision of services pursuant to this section within amounts made available by the department. Each contract shall provide for frequent visitation, inspection of the facility, and enforcement of the minimum standards and shall authorize the supervision of incarcerated individuals residing in a community treatment facility by parole officers.

(b) The commissioner shall promulgate rules and regulations specifying those costs related to the general operation of community treatment facilities that shall be eligible for reimbursement. Such eligible costs shall not include debt service, whether principal or interest, or costs for which state or federal aid or reimbursement is otherwise available. Such rules and regulations shall be subject to the approval of the director of the budget.

(c) The department shall not contract for provision of services to more than fifty incarcerated individuals at any one facility.

(d) At least thirty days prior to final approval of any such contract, a copy of the proposed contract shall be sent to the director of the budget, the chairman of the senate finance committee, the chairman of the senate crime and correction committee, the chairman of the assembly ways and means committee, and the chairman of the assembly committee on codes.

* NB Expires September 1, 2027

§ 72-b. Discharge of incarcerated individuals to adult care facilities. 1. An incarcerated individual about to be discharged to an adult home, enriched housing program or residence for adults, as defined in section two of the social services law, shall be referred only to such home, program or residence that is consistent with that person's needs and that operates pursuant to section four hundred sixty of the social services law. No incarcerated individual shall be directly referred to any facility that is required to be certified as an adult care facility under the provisions of article seven of the social services law, unless it has been determined that such facility has a valid operating certificate.

2. No incarcerated individual about to be paroled, conditionally released, transferred, released or discharged shall be referred to any adult home, enriched housing program or residence for adults, as defined in section two of the social services law, where the department of corrections and community supervision has received written notice that the facility has been placed on the "do not refer list" pursuant to subdivision fifteen of section four hundred sixty-d of the social services law.

§ 72-c. Placement of individuals with children. 1. In determining placement for a person in custody of the department, whenever practicable the commissioner shall place such person in the correctional institution or facility which is located in closest proximity to the primary place of residence of such person's minor child or children as defined in subdivision thirty-one of section two of the social services law, provided that such placement is suitable and appropriate, would facilitate increased contact between such person and his or her child or children, is in the best interest of such child or children, and the incarcerated parent gives his or her consent to such placement.

2. To make a determination about whether such placement is in the best interest of such child or children, procedures and criteria for assessing such placement shall be developed by the department in consultation with the office of children and family services. If such person has more than one child, the department shall make a separate determination for each individual child.

3. The department shall submit an annual report regarding the implementation of this section to the temporary president of the senate, the speaker of the assembly, the minority leader of the senate and minority leader of the assembly as well as to the chairs of the senate committee on crime victims, crime and correction and the assembly standing committee on correction. The report shall include, but not be limited to, the number of incarcerated persons who are parents of minor children, the aggregate number of incarcerated parents by county of commitment, the number of incarcerated parents who are placed in a correctional facility in closest proximity to their children pursuant to this section, the location of such facilities, the number of incarcerated parents for whom proximal placement was not provided, a general explanation of the reasons that such placement was not provided which shall not include any identifying information, and the amount of incarcerated parents who declined such placement pursuant to this section.

§ 73. Residential treatment facilities. 1. The commissioner may transfer any incarcerated individual of a correctional facility who is eligible for community supervision or who will become eligible for community supervision within six months after the date of transfer or who has one year or less remaining to be served under his or her sentence to a residential treatment facility and such person may be allowed to go outside the facility during reasonable and necessary hours to engage in any activity reasonably related to his or her rehabilitation and in accordance with the program established for him or her. While outside the facility he or she shall be at all times in the custody of the department and under its supervision.

2. The department shall be responsible for securing appropriate education, on-the-job training and employment for incarcerated individuals transferred to residential treatment facilities. The department also shall supervise such incarcerated individuals during their participation in activities outside any such facility and at all times while they are outside any such facility.

3. Programs directed toward the rehabilitation and total reintegration into the community of persons transferred to a residential treatment facility shall be established. Each incarcerated individual shall be assigned a specific program by the superintendent of the facility and a written memorandum of such program shall be delivered to him or her.

4. If at any time the superintendent of a residential treatment facility is of the opinion that any aspect of the program assigned to an individual is inconsistent with the welfare or safety of the community or of the facility or its incarcerated individuals, the superintendent may suspend such program or any part thereof and restrict the incarcerated individual's activities in any manner that is necessary and appropriate. Upon taking such action the superintendent shall promptly notify the commissioner and pending decision by the commissioner, the superintendent may keep such incarcerated individual under such security as may be necessary.

5. The commissioner may at any time and for any reason transfer an incarcerated individual from a residential treatment facility to another correctional facility.

6. Where a person who is an incarcerated individual of a residential treatment facility absconds, or fails to return thereto as specified in the program approved for him or her, he or she may be arrested and returned by an officer or employee of the department or by any peace officer, acting pursuant to his or her special duties, or police officer without a warrant; or a member of the board of parole or an officer designated by such board may issue a warrant for the retaking of such person. A warrant issued pursuant to this subdivision shall have the same force and effect, and shall be executed in the same manner, as a warrant issued for violation of community supervision.

7. The provisions of this chapter relating to good behavior allowances and conditional release shall apply to behavior of incarcerated individuals while assigned to a residential treatment facility for behavior on the premises and outside the premises of such facility and good behavior allowances may be granted, withheld, forfeited or

cancelled in whole or in part for behavior outside the premises of the facility to the same extent and in the same manner as is provided for incarcerated individuals within the premises of any facility.

8. The state board of parole may grant parole to any incarcerated individual of a residential treatment facility at any time after he or she becomes eligible therefor. Such parole shall be in accordance with provisions of law that would apply if the person were still confined in the facility from which he or she was transferred, except that any personal appearance before the board may be at any place designated by the board.

9. The earnings of any incarcerated individual of a residential treatment facility shall be dealt with in accordance with the procedure set forth in section eight hundred sixty of this chapter.

10. The commissioner is authorized to use any residential treatment facility as a residence for persons who are on community supervision. Persons who reside in such a facility shall be subject to conditions of community supervision imposed by the board.

§ 74. Discharge on holidays, Saturdays and Sundays. Where the date of release on parole or conditional release, or where the date of discharge from the care or custody of the department, falls on Saturday or Sunday, it shall be deemed to fall on the preceding Friday. Where the date of such release or discharge falls on a legal holiday it shall be deemed to fall on the preceding day, except that when such legal holiday falls on a Monday the date of release shall be deemed to fall on the preceding Friday. Notwithstanding the foregoing, or any other provision of the law to the contrary, the commissioner, in his or her discretion, may advance the release date of an incarcerated individual, who is scheduled to be released on a Friday, to a Thursday in any case where the incarcerated individual will serve a period of community supervision upon release and the commissioner determines that public safety will be enhanced by a next day reporting requirement.

§ 75. Notice of voting rights. Prior to the release from a correctional facility of any person the department shall notify such person verbally and in writing, that his or her voting rights will be restored upon release and provide such person with a form of application for voter registration and a declination form, offer such person assistance in filling out the appropriate form, and provide such person written information distributed by the board of elections on the importance and the mechanics of voting. Upon release, such person may choose to either submit his or her completed application to the state board or county board where such person resides or have the department transmit it on his or her behalf. Where such person chooses to have the department transmit the application, the department shall transmit the completed application upon such person's release to the state board or county board where such person resides.

§ 76. Notice of transitional services for incarcerated individuals released from correctional facilities. 1. (a) Prior to the release of an incarcerated individual from a correctional facility, the department shall provide such incarcerated individual with information on transitional services available in the county or city where such incarcerated individual is scheduled to be released. Such information shall include programs designed to promote the successful and productive reentry and reintegration of an incarcerated individual into society including medical and mental health services, HIV/AIDS services, educational, vocational and employment services, alcohol or substance abuse treatment and housing services. The department shall maintain a current list of transitional services which shall be updated regularly in order to effectuate the purposes of this section. Where appropriate, the department shall provide assistance to an incarcerated individual in contacting a program or service provider prior to such incarcerated individual's release to the community.

(b) Upon discharge of an incarcerated individual from a correctional facility, the department shall provide such incarcerated individual with educational information about the prevention of human immunodeficiency virus (HIV) infection, instructions about how to obtain free HIV testing upon release, including contact information for HIV counseling and testing service providers located in the county or city in which such incarcerated individual intends to reside upon release, and referrals to community-based HIV prevention, education and counseling resources located in the county or city in which such incarcerated individual intends to reside upon release.

2. The commissioner shall consult with, and be entitled to receive the assistance of, the commissioners of education, labor, health, mental health and the office of temporary and disability assistance in the implementation of this section.

§ 78. Discharge plans. The department, in consultation with the office of children and family services, shall provide discharge plans for juvenile offenders and adolescent offenders who are released to parole or post-release supervision, which are tailored to address their individual needs. Such plans shall include services designed to promote public safety and the successful and productive reentry of such adolescents into society.

§ 79. Leasing of state institutions to cities or counties for the confinement of prisoners. 1. The commissioner is hereby authorized and empowered to lease to any city or county, upon such terms and conditions as he may deem appropriate, all or any part of any state correctional institution or facility under his jurisdiction, to be used as an adjunct to a jail, penitentiary or correctional institution of such city or county, for the confinement of persons sentenced to such jail, penitentiary, or correctional institution. Such lease may provide for the commissioner to have the superintendence, management and control of the state correctional institution or facility, or part thereof, which is the subject of such lease. Such lease shall provide for such city or county to pay to the state the actual per capita daily cost, as certified to the appropriate local official by the commissioner, for the care of such persons for each day of confinement, but, in any case, the reimbursement rate shall not exceed five dollars per day per capita.

* 2. The commissioner is hereby authorized and empowered to lease to a city having a population of one million or more, on such terms and conditions as he may deem appropriate, all or any part of the state correctional facility under the department's jurisdiction at Ossining in Westchester county, to be used as an adjunct to any correctional institution of such city used for the detention of persons charged with commission of a crime and committed to detention pending disposition of such charge, for the detention of such persons. Such lease may provide for the commissioner to have the superintendence, management and control of the state correctional facility or part thereof which is the subject of such lease. This subdivision shall not limit the authority of the commissioner of general services provided in chapter seven hundred twenty-five of the laws of nineteen hundred seventy, to convey certain lands described in such chapter to the county of Westchester.

* NB Expired August 1, 1977

§ 79-a. Closure of correctional facilities; notice. Before the closure of any correctional facility,, for reasons other than those set forth in paragraph (a) of subdivision eight of section forty-five of this chapter, the commissioner shall take the following actions:

1. confer with the department of civil service, the governor's office of employee relations and any other appropriate state agencies to develop strategies which attempt to minimize the impact of the closure on the state work force;

2. consult with the department of economic development and any other appropriate state agencies to develop strategies which attempt to minimize the impact of such closures on the local and regional economies; and

3. provide notice by certified mail to (i) all local governments of any political subdivision in which the correctional facility is located, (ii) all employee labor organizations operating within, or representing employees of, the correctional facility, and (iii) managerial and confidential employees employed within the correctional facility at

least twelve months prior to any such closure.

§ 79-b. Adaptive reuse plan for consideration prior to prison closure. Not later than six months prior to the effective date of closure of a correctional facility, the commissioner of economic development shall, in consultation with the commissioner, the commissioners of civil service, general services and the division of criminal justice services, the director of the governor's office of employee relations, officials of all local governments of any political subdivision in which the correctional facility is located and any other appropriate state agencies or authorities, provide a report for an adaptive reuse plan for any facility slated for closure which will evaluate the community impact of the proposed closure including but not limited to the following factors: the potential to utilize the property for another state government purpose, including for a new purpose as part of the state criminal justice system; potential for the sale or transfer of the property to a local government or other governmental entity; potential for the sale of the property to a private entity for development into a business, residential or other purpose; community input for local development; and the condition of the facility and the investments required to keep the structure in good repair, or to make it viable for reuse.

ARTICLE 4-B

ALTERNATE CORRECTIONAL FACILITIES FOR THE CITY OF NEW YORK

§ 86. Purpose of alternate correctional facilities. The purpose of this article is to provide an extraordinary method for relieving existing emergency space pressures in New York city local correctional facilities.

§ 87. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Alternate correctional facility" shall mean a correctional facility designed to house medium security incarcerated individuals as defined by department rules and regulations, which is owned by the city of New York, operated by the department pursuant to the rules and regulations promulgated by the commissioner and in accordance with the operation agreement as defined in subdivision five of this section, and used for the confinement of eligible incarcerated individuals, as defined by subdivision four of this section.

2. "Panel" shall mean the alternate correctional facility review panel established pursuant to section eighty-nine-e of this article.

3. "Construction agreement" shall mean an agreement entered into pursuant to section eighty-eight of this article by the commissioner and the city of New York which governs the construction of two alternate correctional facilities of approximately seven hundred beds each, one at

Ogdensburg and one at Cape Vincent, New York.

4. "Eligible incarcerated individuals" shall mean incarcerated individuals of a New York city correctional facility who are at least nineteen years of age, who are serving a definite, but not an intermittent, sentence of imprisonment, and who do not have criminal charges pending against them.

5. "Operation agreement" shall mean an agreement entered into pursuant to section eighty-eight of this article by the commissioner and the city of New York which governs the operation of one or both alternate correctional facilities and addresses all related issues, including, but not limited to, general staffing levels and nature of staffing positions; composition of medical staff; availability of outside medical services; procedures and criteria for selecting eligible incarcerated individuals; availability and frequency of transportation of incarcerated individuals and visitors of incarcerated individuals to such facility; availability, content and frequency of programming for incarcerated individuals; mechanisms to establish, monitor and review operating and capital expenditures; and legal representation of both incarcerated individuals and employees of such facilities.

§ 88. Authorization for alternate correctional facilities. 1. As hereinafter provided in this article, the department is authorized and empowered to establish, operate and maintain under its jurisdiction no more than two alternate correctional facilities.

2. In carrying out the purposes of this article, the department may acquire land for and construct the alternate correctional facilities authorized pursuant to this section.

3. Any acquisition of land for or construction of an alternate correctional facility shall be governed by section twenty-one of this chapter, section one hundred twenty-seven of the state finance law and any other provisions of law applicable to the acquisition of land for and construction of state correctional facilities. The department, if it

elects, shall be the lead agency for all purposes under article eight of the environmental conservation law with respect to alternate correctional facilities.

4. For each alternate correctional facility, the commissioner is hereby authorized and empowered to enter into a construction agreement, an operation agreement, and any other agreements or leases with the city of New York which are deemed by the commissioner to be necessary or convenient for the establishment, operation and maintenance of an alternate correctional facility. An operation agreement shall govern the operation of an alternate correctional facility for up to ten years after the commencement of housing of eligible incarcerated individuals at such facility. The commissioner shall not operate an alternate correctional facility except pursuant to an executed operation agreement.

5. All agreements entered into by the commissioner and the city of New York pursuant to this section shall be approved by the director of the budget and filed with the chairman of the senate finance committee, the chairman of the assembly ways and means committee, the chairman of the senate crime and corrections committee and the chairman of the assembly committee on correction.

§ 88-a. Authorization for the city of New York to acquire and utilize alternate correctional facilities. As set forth in this article, the city of New York, acting by and through its mayor, is authorized and empowered:

1. To enter into a construction agreement as defined in this article and pursuant to such agreement to advance payment for the construction of and to acquire from the state two alternate correctional facilities, one in Ogdensburg and one in Cape Vincent, and to finance such construction and acquisition in the manner provided by law under which the city of New York is authorized to finance property acquired or constructed for public purposes regardless of the period of any operation agreement relating to such facilities.

2. To enter into an operation agreement or agreements as defined in this article and pursuant to any such agreements to utilize alternate correctional facilities for the housing of certain incarcerated individuals of New York city correctional facilities.

3. To pay to the state the costs, both capital and operating, which may be required of the city of New York by the state in accordance with a construction agreement or an operation agreement in the manner set forth in any such agreement, including payment in advance of receipt of services.

4. To sell, subject to the provisions of section eighty-nine-k of this article, facilities which were originally acquired from the state as alternate correctional facilities. Upon sale for cash by the city of New York of any facility originally acquired pursuant to a construction agreement as defined in this article, an amount equal to the principal amount of any bonds then outstanding used to finance such acquisition shall be utilized by the city of New York for its general capital purposes.

5. To make provision for indemnification in any construction or operation agreement to conform with the requirements set forth in section eighty-nine-l of this article.

6. From time to time, to authorize, issue and sell obligations, pursuant to the local finance law, to pay the costs of acquiring property, of constructing alternate correctional facilities, of constructing, reconstructing or otherwise providing other public improvements and appurtenances, including in each case architectural and engineering fees, and of purchasing original furnishings, equipment, machinery and apparatus therefor pursuant to this section. The acquisition of such property, the construction of such correctional facilities, the construction, reconstruction or other provision of other public improvements and appurtenances and the purchase of such original furnishings, equipment, machinery and apparatus are hereby declared city purposes.

§ 89. Establishment of alternate correctional facilities. An alternate correctional facility shall be deemed to have been established when the commissioner has filed with the secretary of state a designation of such facility which sets forth, at a minimum, the name and location of the facility, a copy of the department's rules and regulations for the operation of that facility, and a copy of all applicable agreements, including a construction agreement and an operation agreement.

§ 89-a. 1. Management of alternate correctional facilities. Superintendence, management and control of alternate correctional facilities and the eligible incarcerated individuals housed therein shall be as directed by the commissioner consistent with the following: an alternate correctional facility shall be operated pursuant to rules and regulations promulgated for such facilities by the commissioner in consultation with the state commission of correction and the provisions of the operation agreement. The commissioner shall operate such facility insofar as practicable in the same manner as a general confinement facility which houses medium security state incarcerated individuals. Nothing herein, however, shall preclude the commissioner from enhancing staffing or programming to accommodate the particular needs of eligible incarcerated individuals pursuant to the operation agreement. No incarcerated individual shall be housed in any alternate correctional facility until such facility has been established in accordance with the provisions of section eighty-nine of this article. The population in an alternate correctional facility shall not exceed its design capacity of approximately seven hundred eligible incarcerated individuals except pursuant to variances permitted by law, rule or regulation or court order.

2. Notwithstanding any other provisions of law, no variance authorizing an alternate correctional facility to exceed its design capacity shall be granted after March fifteenth, nineteen hundred ninety-two unless the mayor of the city of New York submits, together with the variance request, a certificate of emergency demonstrating the

need for such variance and that reasonable alternatives to the granting of the variance do not exist, and containing a detailed summary of measures that will be taken to restore compliance with such design capacity. The chairman of the state commission of correction shall transmit, in a timely manner, notice of such request to the chairmen of the senate crime and correction committee and the assembly correction committee.

§ 89-b. Good behavior time allowances against definite sentences served in alternate correctional facilities. Notwithstanding any other provision of law, the commissioner shall be authorized to grant, withhold, cause to be forfeited, or cancel time allowances as provided in and in compliance with section eight hundred four of the correction law.

§ 89-c. Use of alternate correctional facilities. 1. Alternate correctional facilities shall serve only to supplement local correctional facilities within the city of New York. In considering whether to assign an eligible incarcerated individual to an alternate correctional facility or to transfer such incarcerated individual from such facility, preference shall be given to available space suitable for housing sentenced incarcerated individuals at local correctional facilities within the city of New York.

2. Consistent with the provisions of this article and subject to the applicable rules and regulations for operation of alternate correctional facilities and the provisions of the operation agreement, assignment of incarcerated individuals to alternate correctional facilities shall be made jointly by the commissioner and the commissioner of the New York city department of correction. In making such assignments, consideration shall be given to incarcerated individuals who have a greater period of time remaining to be served on their sentences, taking into account any applicable jail time and good behavior time. No incarcerated individual who is eligible for educational services pursuant to subdivision seven of section three thousand two hundred two of the education law and who

chooses to avail himself or herself of such services shall be assigned to an alternate correctional facility.

3. Incarcerated individuals assigned to alternate correctional facilities shall be returned to a local correctional facility within the city of New York at any such time as the commissioner determines:

(a) that the assignment was not in accordance with this article, or

(b) that the confinement of an incarcerated individual in an alternate correctional facility is no longer suitable because it potentially endangers the safety, security or order of the facility.

4. Any incarcerated individual who is eligible for educational services pursuant to subdivision seven of section three thousand two hundred two of the education law shall also be returned to a New York city local correctional facility if he or she chooses to avail himself or herself of such services.

5. Incarcerated individuals assigned to alternate correctional facilities shall be returned to a New York city correctional facility within the city of New York no later than seven days prior to their scheduled release or discharge from incarceration.

6. Notwithstanding any other provisions of law, no incarcerated individuals from jurisdictions other than the city of New York shall be housed at any time in an alternate correctional facility.

§ 89-d. Transportation. The state of New York shall have no responsibility, financial or otherwise, for transporting incarcerated individuals between a New York city local correctional facility and an alternate correctional facility, regardless of the reason for such transfer. The city of New York shall be responsible for all such costs, as well as the actual transportation and supervision of incarcerated individuals during transport.

§ 89-e. Alternate correctional facility review panel. 1. The alternate correctional facility review panel is hereby established and shall consist of the commissioner, the chairman of the state commission of correction, the chairman of the board of parole, the director of the office of probation and correctional alternatives, the commissioner of correction of the city of New York, the president of the New York State Sheriffs' Association Institute, Inc., and the president of the Correctional Association of New York or their designees. The governor shall appoint a chairman and vice-chairman from among the members.

2. The panel shall be authorized to enter and inspect at any and all times each alternate correctional facility or any part thereof and shall have access to all books, records and data pertaining to any such facility within the possession of the department relating to subdivision three of this section.

3. The panel shall examine whether alternate correctional facilities should continue to be utilized, whether all steps practicable have been taken by the city of New York toward finding alternatives to housing eligible incarcerated individuals in alternate correctional facilities, including the construction of correctional facilities within the city of New York and the development of alternatives to incarceration, and whether there has been compliance with all applicable laws, rules and regulations and the operation agreement.

4. The panel shall prepare an annual report which shall be filed with the governor, the mayor of the city of New York, the chairman of the senate crime and correction committee, and the chairman of the assembly committee on correction no later than the first day of March of each year.

§ 89-f. Oversight. The state commission of correction shall exercise the same powers and duties concerning each alternate correctional facility as the commission is required to exercise concerning a New York state correctional facility. The commission shall prepare an annual report on each alternate correctional facility which shall evaluate and assess the department's compliance with all rules and regulations applicable to that facility and the operation agreement and which shall include an analysis of the frequency and severity of all unusual incidents and assaults occurring in that facility. The annual reports shall be filed with the governor, the mayor of the city of New York, the chairman of the senate crime and correction committee, and the chairman of the assembly committee on correction no later than the first day of June of each year.

§ 89-g. Costs for establishing, operating and maintaining alternate correctional facilities. 1. When the city of New York has entered into the agreements as set forth in section eighty-eight of this article, it shall be obligated, to pay, in accordance with such agreements and at such times and in such amounts as may be determined by the commissioner and approved by the director of the budget, all direct and indirect costs associated with the acquisition, construction, establishment, capital repairs and improvements, operation and maintenance of the alternate correctional facility.

2. Upon completion of the acquisition, construction and establishment of an alternate correctional facility, the commissioner shall make a final determination of the cost of such project and shall certify such cost to the comptroller and to the city of New York. Notwithstanding any other provision of law to the contrary, upon receipt of such certification of the commissioner, the comptroller shall forthwith refund any amounts received from the city of New York in excess of the costs so certified to the city of New York, including interest accrued thereon.

3. On or before October fifteenth of each year, the comptroller shall certify to the commissioner the actual operation and maintenance costs of each alternate correctional facility for the preceding state fiscal year and the amounts paid by the city of New York for such operation and maintenance costs. To the extent that the amounts so paid by the city of New York are less than the operation and maintenance costs for such state fiscal year, the commissioner shall include the amount of such underpayment in the next payment required to be received from the city

of New York, or if operation by the state has terminated, the commissioner shall bill the city of New York for the amounts due and such amounts shall be paid by the city within thirty days of receipt of such a bill. To the extent that the amounts so paid by the city of New York are more than the operation and maintenance costs for such state fiscal year, the commissioner shall reduce the next scheduled payment to be received from the city of New York by the amount of the overpayment or if operation by the state has terminated, the commissioner shall refund the overpayment within sixty days of the determination of overpayment.

§ 89-h. Alternate correctional facilities operating fund. 1. There is hereby established in the joint custody of the state comptroller and the commissioner of taxation and finance a special revenue fund to be known as the alternate correctional facilities operating fund.

2. Such fund shall consist of all moneys received by the commissioner pursuant to the operation agreement and all monies received pursuant to section eighty-nine-l of this article. Any interest accruing on amounts deposited in this fund shall be credited to this fund by the state comptroller and shall reduce the amounts the city of New York would otherwise be obligated to pay pursuant to this article. Upon termination of the operation agreement, any balance in the fund less any amount due from the city of New York hereunder shall be paid to the city of New York within sixty days.

3. In the event that any amounts owed by the city of New York pursuant to section eighty-nine-g of this article are not paid to the commissioner within thirty days of the time such payment is due, the commissioner shall certify the unpaid amount to the state comptroller and the comptroller shall, to the extent not otherwise prohibited by law and subject to any other provision of law providing for withholding of payments to the city of New York which shall take precedence over this subdivision, withhold any such unpaid amount from the next succeeding payments of state aid or local assistance otherwise payable to the city of New York. The amounts so withheld by the comptroller shall be

deposited by the comptroller to the fund established by this section.

4. All payments from this account shall be made on the audit of the comptroller on vouchers certified or approved by the commissioner or an employee of the department designated by the commissioner.

§ 89-i. Local taxes. Alternate correctional facilities shall be exempt from all local property taxes while fee title to such facilities is vested in the city of New York.

§ 89-j. Title to facilities. Upon payment by the city of New York of the costs of acquisition and construction, the state of New York shall transfer title in fee simple absolute to the city of New York without additional consideration. Notwithstanding the foregoing, as long as an operation agreement entered into pursuant to this article is in effect, the department shall have sole and exclusive authority to operate, manage and maintain such facility including but not limited to the authority to authorize or make without obtaining approval from the city of New York any capital repairs or improvements deemed necessary.

§ 89-k. Termination of operation agreement. At the termination of the operation agreement as to either or both alternate correctional facilities, the department shall have an exclusive option to purchase, from the city of New York, the facility or facilities for which the operation agreement has terminated, at a fair market value price or prices which shall be negotiated by the state office of general services and the city of New York. The duration of the state's option to purchase shall commence on the date notice is received from the city of New York of its intent to terminate such agreement and shall continue for a period of six months or until the next succeeding April first, whichever is longer. Such option to purchase shall be deemed exercised upon execution of an agreement to purchase. Notwithstanding any other provision of law, these facilities shall not be operated as correctional facilities except by the department.

§ 89-l. Indemnification. The city of New York shall indemnify and hold harmless the state of New York in any action or proceeding arising out of the construction, maintenance or operation of an alternate correctional facility which is constructed, maintained or operated in accordance with the provisions of this article. The obligation to indemnify and hold harmless imposed herein shall include reasonable attorneys' fees, court costs, and costs of litigation including witness fees, incurred by the state of New York in connection with the defense of any such action or proceeding. Such obligation shall extend to any expenses incurred by the state of New York pursuant to section seventeen of the public officers law for the defense and indemnification of state officers and employees in any action or proceeding arising out of the construction, maintenance or operation of any such facility constructed, maintained and operated in accordance with the provisions of this article and the operating agreement or agreements. The city of New York's obligation to indemnify and hold harmless the state of New York shall in no way be construed as relieving the state of its obligation to comply with any and all orders or injunctions issued by any court of competent jurisdiction.

ARTICLE 5

COORDINATED USE OF STATE AND LOCAL CORRECTIONAL INSTITUTIONS

persons under custody with or awaiting transfer to the department.

§ 90. Purposes of article. The purposes of the provisions of this article are:

1. To provide correctional programs for persons who receive sentences of imprisonment with terms of one year or less and who otherwise would be confined in institutions in counties that do not have a sufficient number of incarcerated individuals to justify construction of an adequate correctional institution or operation of a modern correctional program;

2. To provide a method of relieving space pressures in correctional institutions operated by local government; and

3. To expand the use of programs designed to bridge the gap between incarceration and activities in the community, through the use of institutions operated by local government as facilities for residential treatment of persons in the custody of the state department of corrections and community supervision.

*** § 91. Agreements for custody of definite sentence incarcerated individuals.** 1. The commissioner may enter into an agreement with any county or with the city of New York to provide for custody by the department of persons who receive definite sentences of imprisonment with terms in excess of ninety days who otherwise would serve such sentences in the jail, workhouse, penitentiary or other local correctional institution maintained by such locality; provided, however, that a person committed to the custody of the department pursuant to an agreement established by this section, except a person committed pursuant to an agreement with the city of New York, shall be delivered to a reception center designated by the commissioner for an initial processing period which shall be no longer than seven days, and thereafter, shall be transferred to a general confinement correctional facility located in the same county or in a county adjacent to the county where such person would otherwise be committed to a local correctional facility. In the event, however, that exigent circumstances related to health, safety or security arise which require the immediate transfer of an incarcerated individual to a different facility not within the county or adjacent county, then the department shall, as soon thereafter as practicable, arrange for such incarcerated individual to be returned to the jurisdiction of the county from which he or she was committed.

2. Any such agreement, except one that is made with the city of New York, may be made with the sheriff, warden, superintendent, local commissioner of correction or other person in charge of such county institution and shall be subject to the approval of the chief executive officer of the county. An agreement made with the city of New York may be made with the commissioner of correction of that city and shall be subject to the approval of the mayor.

3. An agreement made under this section shall require the locality to pay the cost of treatment, maintenance and custody furnished by the department, and the costs incurred under subdivision two or three of section one hundred twenty-five of this chapter relating to the provision of clothing, money and transportation upon release or discharge of incarcerated individuals delivered to the department pursuant to the agreement, and shall contain at least the following provisions:

(a) A provision specifying the minimum length of the term of imprisonment of persons who may be received by the department under the agreement, which may be any term in excess of ninety days agreed to by the parties and which need not be the same in each agreement;

(b) A provision that no charge will be made to the state or to the department or to any of its institutions during the pendency of such agreement for delivery of incarcerated individuals to the department by officers of the locality, and that the provisions of section six hundred two of this chapter or of any similar law shall not apply for delivery of incarcerated individuals during such time;

(c) Designation of the correctional facility or facilities to which persons under sentences covered by the agreement are to be delivered;

(d) A provision requiring the department to provide transitional services upon the release of persons committed to the custody of the department pursuant to an agreement established by this section;

(e) Any other provision the commissioner may deem necessary or appropriate; and

(f) A provision giving either party the right to cancel the agreement by giving the other party notice in writing, with cancellation to become effective on such date as may be specified in such notice.

4. Notwithstanding any other provision of law, the commissioner shall be authorized to grant, withhold, cause to be forfeited, or cancel time allowances as provided in and in compliance with section eight hundred four of this chapter.

5. A copy of such agreement shall be filed with the secretary of state and with the clerk of each court having jurisdiction to impose sentences covered by the agreement in the county or city to which it applies.

* NB Effective until September 1, 2027

* § 91. Agreements for custody of definite sentence incarcerated individuals. 1. The state commissioner of corrections and community supervision may enter into an agreement with any county or with the city of New York to provide for custody by the state department of corrections and community supervision of persons who receive definite sentences of imprisonment with terms in excess of ninety days who otherwise would serve such sentences in the jail, workhouse, penitentiary or other local correctional institution maintained by such locality.

2. Any such agreement, except one that is made with the city of New York, may be made with the sheriff, warden, superintendent, local commissioner of correction or other person in charge of such county institution and shall be subject to the approval of the chief executive officer of the county. An agreement made with the city of New York may be made with the commissioner of correction of that city and shall be subject to the approval of the mayor.

3. An agreement made under this section shall not require the locality to pay the cost of treatment, maintenance and custody furnished by the state department of corrections and community supervision and shall contain at least the following provisions:

(a) A provision specifying the minimum length of the term of imprisonment of persons who may be received by the state department of corrections and community supervision under the agreement, which may be any term in excess of ninety days agreed to by the parties and which need not be the same in each agreement;

(b) A provision that no charge will be made to the state or to the state department of corrections and community supervision or to any of its institutions during the pendency of such agreement for delivery of incarcerated individuals to the state department of corrections and community supervision by officers of the locality, and that the provisions of section six hundred two of this chapter or of any similar law shall not apply for delivery of incarcerated individuals during such time;

(c) A provision that no charge shall be made to or shall be payable by the state during the pendency of such agreement for the expense of maintaining parole violators pursuant to section two hundred fifty-nine-i of the executive law, for the expense of maintaining coram nobis prisoners pursuant to section six hundred one-b of this chapter, or for the expense of maintaining felony prisoners pursuant to section six hundred one-c of this chapter;

(d) A provision, approved by the state comptroller, for reimbursement of the state department of corrections and community supervision by the locality for expenses incurred under subdivision two or three of section one hundred twenty-five of this chapter relating to clothing, money and transportation furnished upon release or discharge of incarcerated individuals delivered to the state department of corrections and community supervision pursuant to the agreement;

(e) Designation of the correctional facility or facilities to which persons under sentences covered by the agreement are to be delivered;

(f) Any other provision the state commissioner of corrections and community supervision may deem necessary or appropriate; and

(g) A provision giving either party the right to cancel the agreement by giving the other party notice in writing, with cancellation to become effective on such date as may be specified in such notice.

4. A copy of such agreement shall be filed with the secretary of state and with the clerk of each court having jurisdiction to impose sentences covered by the agreement in the county or city to which it applies.
* NB Effective September 1, 2027

*** § 92. Effect of agreement for custody of definite sentence incarcerated individuals.** 1. After a copy of an agreement made under section ninety-one of this article is filed with the secretary of state, all commitments under sentences covered by the agreement by courts in the county or city to which it applies shall be deemed to be to the custody of the department and shall be so construed and interpreted irrespective of the institution or agency to which the commitments are made.

2. Any incarcerated individual who is serving a term of imprisonment covered by the agreement imposed prior to the filing of such agreement, and any incarcerated individual who is under consecutive definite sentences of imprisonment with an aggregate term of the length covered by the agreement, irrespective of whether one or more of such sentences was imposed prior to the filing of the agreement, may be transferred to the care of the department upon request of the head of the county or city institution and approval of the commissioner.

3. Incarcerated individuals who are deemed committed to the custody of the department under subdivision one of this section, or who may be transferred to the care of the department under subdivision two of this section, shall be dealt with in all respects in the same manner as incarcerated individuals committed to the custody of the department.

4. In the event any such agreement is cancelled, incarcerated individuals delivered to the department prior to the date of cancellation shall continue to serve their sentences in the custody of such department and the provisions of such agreement shall continue to apply with respect to such incarcerated individuals. A copy of the

notice of cancellation shall be filed with the secretary of state and with the clerks of courts in the manner provided in subdivision four of section ninety-one of this article, and no incarcerated individuals shall be delivered to the custody of the department under such agreement after the date on which such cancellation becomes effective.

* NB Effective until September 1, 2027

* § 92. Effect of agreement for custody of definite sentence incarcerated individuals. 1. After a copy of an agreement made under section ninety-one of this article is filed with the secretary of state, all commitments under sentences covered by the agreement by courts in the county or city to which it applies shall be deemed to be to the custody of the state department of corrections and community supervision and shall be so construed and interpreted irrespective of the institution or agency to which the commitments are made.

2. Any incarcerated individual who is serving a term of imprisonment covered by the agreement imposed prior to the filing of such agreement, and any incarcerated individual who is under consecutive definite sentences of imprisonment with an aggregate term of the length covered by the agreement, irrespective of whether one or more of such sentences was imposed prior to the filing of the agreement, may be transferred to the care of the state department of corrections and community supervision upon request of the head of the county or city institution and approval of the state commissioner of corrections and community supervision.

3. Incarcerated individuals who are deemed committed to the custody of the state department of corrections and community supervision under subdivision one of this section, or who may be transferred to the care of the state department of corrections and community supervision under subdivision two of this section, shall be dealt with in all respects in the same manner as incarcerated individuals committed to the custody of the state department of corrections and community supervision.

4. In the event any such agreement is cancelled, incarcerated individuals delivered to the state department of corrections and community supervision prior to the date of cancellation shall continue

to serve their sentences in the custody of such department and the provisions of such agreement shall continue to apply with respect to such incarcerated individuals. A copy of the notice of cancellation shall be filed with the secretary of state and with the clerks of courts in the manner provided in subdivision four of section ninety-one of this article, and no incarcerated individuals shall be delivered to the custody of the state department of corrections and community supervision under such agreement after the date on which such cancellation becomes effective.

* NB Effective September 1, 2027

§ 93. Temporary custody of sentenced incarcerated individuals in emergencies. 1. Whenever a state of emergency shall be declared by the chief executive officer of a local government pursuant to section two hundred nine-m of the general municipal law, the chief executive officer of the county in which such state of emergency is declared, or where a county or counties are wholly within a city the mayor of such city, may request the governor to remove all or any number of sentenced incarcerated individuals from institutions maintained by such county or city. Upon receipt of such request, if the governor is satisfied that the public interest so requires, the governor may, in his or her discretion, authorize and direct the state commissioner of corrections and community supervision to remove such incarcerated individuals.

2. Upon receipt of any such direction the state commissioner of corrections and community supervision shall transport such incarcerated individuals to any correctional facility in the department and such incarcerated individuals shall be retained in the custody of the department, subject to all laws and rules and regulations pertaining to incarcerated individuals in the custody of the department, until returned to the institution from which they were removed or discharged or released in accordance with the law.

3. In the event that the state department of corrections and community supervision does not have space in its correctional facilities to accommodate all or any number of the incarcerated individuals so removed

from a local institution, the commissioner shall have the power to lodge any number of such incarcerated individuals in any county jail, workhouse or penitentiary within the state that has room to receive them and such institution shall be required to receive such incarcerated individuals. Incarcerated individuals so lodged shall be subject to all rules and regulations pertaining to incarcerated individuals committed to such institution until returned to the institution from which they were removed, or removed to a state correctional facility, or discharged or released in accordance with the law; provided, however, that incarcerated individuals discharged or released from any such local institution shall be entitled to receive clothing, money and transportation from the state department of corrections and community supervision to the same extent as incarcerated individuals discharged or released from a state correctional facility.

4. When sentenced incarcerated individuals have been removed from a penitentiary pursuant to this section, such penitentiary may be used for the purpose of detention of prisoners awaiting trial or for any other purpose to which a county jail may be put.

5. The original order of commitment and any other case record pertaining to incarcerated individuals removed pursuant to this section shall be delivered to the head of any institution in which he or she may be lodged and shall be returned to the institution from which he or she was removed at the time of his or her return to such institution or upon his or her release or discharge in accordance with the law.

6. Incarcerated individuals removed from a local institution pursuant to a request made under subdivision one of this section may be returned to such institution by the state commissioner of corrections and community supervision, subject to the approval of the governor, at any time such commissioner is satisfied that the return of such incarcerated individuals is not inconsistent with the public interest.

7. The county or city maintaining the institution from which incarcerated individuals are removed pursuant to subdivision one of this section shall be liable for all damages arising out of any act performed

pursuant to this section and for reimbursement for the following items:

(a) The cost of clothing, money and transportation furnished to any incarcerated individual who is released or discharged prior to the return of such incarcerated individual to the institution from which he or she is removed shall be paid to the state department of corrections and community supervision; and

(b) The cost of maintaining any incarcerated individual in a county jail, workhouse or penitentiary shall be paid to the local government that maintains such institution. Such cost shall be the actual per capita daily cost, as certified to the state commissioner of corrections and community supervision.

§ 94. Use of local government institutions for residential treatment of persons under the custody of the state department of corrections and community supervision. 1. The state commissioner of corrections and community supervision is hereby authorized to transfer any incarcerated individual under the care or custody of the department who is eligible to be transferred to a residential treatment facility under section seventy-three of this chapter to any county jail, workhouse or penitentiary for the purpose of having such incarcerated individual engage in a residential treatment facility program; provided, however, that:

(a) Such incarcerated individual has resided or was employed or has dependents or parents who reside in the county, or in a county that is contiguous to the county, in which the institution to which he or she would be transferred is located;

(b) Arrangements have been made for the education, on-the-job training, employment or for some other rehabilitative treatment of such incarcerated individual in the county, or in a county that is contiguous to the county, in which the institution to which he or she would be transferred is located; and

(c) The sheriff, warden, superintendent, local commissioner of correction or other person in charge of the institution to which the incarcerated individual would be transferred consents to such transfer.

2. An incarcerated individual so transferred shall continue to be in

the custody of the state department of corrections and community supervision but shall, during the period of such transfer, be in the care of the head of the institution to which he or she is transferred. The provisions of section seventy-three of this chapter shall apply in the case of any such transfer as fully and completely as if the incarcerated individual were transferred to a residential treatment facility, and the head of the institution to which the incarcerated individual is transferred and the officers and employees thereof shall have and may exercise all of the powers of the superintendent of a residential treatment facility with respect to the care or custody of such incarcerated individual.

In any case where an incarcerated individual is employed, however, the provisions of subdivision nine of such section seventy-three shall not apply and the wages or salary of such incarcerated individual shall be dealt with under the provisions applicable to a work release program in the type of institution to which he or she is transferred as provided in section one hundred fifty-four or eight hundred seventy-two of this chapter as the case may be; and in the event such incarcerated individual is returned to a state correctional facility, any balance remaining in the trust fund account shall be paid over to the superintendent of such facility and shall be deposited by him or her as incarcerated individuals' funds pursuant to section one hundred sixteen of this chapter.

3. If at any time the head of a local institution to which an incarcerated individual is transferred under this section is of the opinion that continued care of such incarcerated individual in such institution is inconsistent with the welfare or safety of the community or of the institution or its incarcerated individuals, he or she may request the state commissioner to return such incarcerated individual to a state correctional facility and, upon the receipt of any such request, the commissioner shall cause such incarcerated individual to be so returned promptly and at the expense of the state department of corrections and community supervision.

4. The expenses of any such transfer shall be paid by the state

department of corrections and community supervision and the commissioner is hereby authorized to reimburse the local institution for a sum determined by the head of such institution and agreed to in advance by the commissioner to be the cost of food, lodging and clothing within the institution, and the actual and necessary food, travel and other expenses required for a program outside the institution, incurred or advanced by the institution; provided, however, that:

(a) In any case where the commissioner has a pending agreement with a locality under section ninety-one of this article, the commissioner shall not reimburse the local institution for any cost incurred for food, lodging and clothing within the institution; and

(b) The wages or salary, if any, of such incarcerated individual shall be used for such reimbursement and shall be applied to defray any costs authorized to be paid under this section before any amount shall be paid by the commissioner hereunder, and any such wages or salary may be so applied irrespective of the provisions of paragraph (a) of this subdivision.

§ 95. Use of local government institutions for confinement of persons under custody with or awaiting transfer to the department. 1. Notwithstanding any other provision of law, the commissioner is hereby authorized to contract with any county or the city of New York for the use of a local correctional facility to provide for the care and custody of any person convicted of an offense and sentenced to a determinate or to an indeterminate sentence of imprisonment who is awaiting transfer to or has been transferred to the custody of the department as required by section 430.20 of the criminal procedure law; provided, however, that any such contract under this section shall not include persons charged with or found to be in violation of parole or conditional release pursuant to subdivision three of section two hundred fifty-nine-i of the executive law.

2. Any such incarcerated individual shall be deemed to be in the custody of and subject to the jurisdiction of the department but shall, during the period of his or her local confinement, be under the care of the head of the local correctional facility in which he or she resides.

3. If at any time the head of the local correctional facility is of the opinion that the continued care of such incarcerated individual in the local correctional facility is inconsistent with the welfare or safety of the incarcerated individual, the community, the facility or other incarcerated individuals, he or she may demand that such incarcerated individual be transferred forthwith to the custody of the department. Thereafter, the department shall be obligated to receive into its custody such incarcerated individual in the manner prescribed for the acceptance of newly sentenced incarcerated individuals required by section 430.20 of the criminal procedure law unless the contract specifies an alternative method of transfer. Notwithstanding the foregoing, in any case where the incarcerated individual in the care of the local correctional facility pursuant to a contract as provided for in this section is convicted of a class A-1 felony offense or a class B violent felony offense or a class C violent felony offense, the head of the local correctional facility may demand that such incarcerated individual be transferred forthwith to the custody of the department. Thereafter, the department shall be obligated to receive into its custody such incarcerated individual within forty-eight hours of receipt of such demand from the head of the local correctional facility.

4. The commissioner is hereby authorized to reimburse the contracting county or the city of New York for a sum equivalent to the actual per day per capita cost, as certified by the appropriate local official, or one hundred dollars per day per capita, whichever is less.

5. No incarcerated individual shall be housed in a local correctional facility or series of local correctional facilities pursuant to a contract under subdivision one of this section for a period exceeding six months.

ARTICLE 5-A

INTERSTATE CORRECTIONS COMPACT

§ 100. Compact. The interstate corrections compact as set forth in this article is hereby adopted and entered into with all jurisdictions joining therein.

§ 101. Short title; purpose. This article shall be known and may be cited as the "interstate corrections compact". The party states, desiring common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

§ 102. Definitions. As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" means a state party to this compact in which conviction or court commitment was had.

(c) "Receiving state" means a state party to this compact to which an incarcerated individual is sent for confinement other than a state in which conviction or court commitment was had.

(d) "Incarcerated individual" means a male or female offender who is committed, under sentence to or confined in a penal or correctional institution.

(e) "Institution" means any penal or correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which incarcerated individuals as defined in subdivision (d) of this section may lawfully be confined.

§ 103. Contracts. (a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of incarcerated individuals on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.

2. Payments to be made to the receiving state by the sending state for incarcerated individual maintenance, extraordinary medical and dental expenses, and any participation in or receipt by incarcerated individuals of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

3. Participation in programs of incarcerated individual employment, if any; the disposition or crediting of any payments received by incarcerated individuals on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

4. Delivery and retaking of incarcerated individuals.

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

§ 104. Procedures and rights. (a) Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to section one hundred three of this article, shall decide that confinement in, or transfer of an incarcerated individual to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine incarcerated individuals for the purpose of inspecting the facilities thereof and visiting such of its incarcerated individuals as may be confined in the institution.

(c) Incarcerated individuals confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine incarcerated individuals, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provide that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms contained in section one hundred three of this article.

(d) Each receiving state shall provide regular reports to each sending state on the incarcerated individuals of that sending state in institutions pursuant to this compact including a conduct record of each incarcerated individual and certify said record to the official designated by the sending state, in order that each incarcerated individual may have official review of his or her record in determining and altering the disposition of said incarcerated individual in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All incarcerated individuals who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar incarcerated individuals of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any incarcerated individual so confined of any legal rights which said incarcerated individual would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an incarcerated individual confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

(g) Any incarcerated individual confined pursuant to this compact shall be released within the territory of the sending state unless the incarcerated individual, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any incarcerated individual confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his or her status changed on account of any action or proceeding in which he or she could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any incarcerated individual shall not be deprived of or restricted in his or her exercise of any power in respect to any incarcerated individual confined pursuant to the terms of this compact.

§ 105. Acts not reviewable in receiving state; extradition. (a) Any decision of the sending state in respect to any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an incarcerated individual from an institution in the receiving state there is pending against the incarcerated individual within such state any criminal charge or if the incarcerated individual is formally accused of having committed within such state a criminal offense, the incarcerated individual shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport incarcerated individuals pursuant to this compact through any and all states party to this compact without interference.

(b) Any incarcerated individual who escapes from an institution in which he or she is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of any escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of the escapee.

§ 106. Federal aid. Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any incarcerated individual in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision, provided that if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

§ 107. Entry into force. This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

§ 108. Withdrawal and termination. This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until one year after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such incarcerated individuals as it may have confined pursuant to the provisions of this compact.

§ 109. Construction and severability. (a) Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation or treatment of incarcerated individuals nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

(b) The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

ARTICLE 6

MANAGEMENT OF CORRECTIONAL FACILITIES

§ 112. Powers and duties of commissioner relating to correctional facilities and community supervision. 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 shall have the power and it shall be his or her duty to inquire into all matters connected with said correctional facilities. He or she 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 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 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 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 shall appoint and remove, subject to the civil service law, subordinate officers and other employees of the department who are assigned to correctional facilities.

2. The commissioner shall have the management and control of persons released on community supervision and of all matters relating to such persons' effective reentry into the community, as well as all contracts and fiscal concerns thereof. The commissioner shall have the power and it shall be his or her duty to inquire into all matters connected with said community supervision. The commissioner shall make such rules and regulations, not in conflict with the statutes of this state, for the governance of the officers and other employees of the department assigned to said community supervision, and in regard to the duties to be performed by them, as he or she deems proper and shall cause such rules and regulations to be furnished to each employee assigned to perform community supervision. The commissioner shall also prescribe a system of accounts and records to be kept, which shall be uniform. The commissioner shall also make rules and regulations for a record of photographs and other means of identifying each incarcerated individual released to community supervision. The commissioner shall appoint officers and other employees of the department who are assigned to perform community supervision.

3. The commissioner may require reports from the superintendent or any other officer or employee of the department assigned to any correctional facility or to perform community supervision in relation to his or her conduct as such officer or employee, and shall have the power to inquire into any improper conduct which may be alleged to have been committed by any person at any correctional facility or in the course of his or her performance of community supervision, and for that purpose to issue subpoenas to compel the attendance of witnesses, and the production before him or her of books, writings and papers. A subpoena issued under this section shall be regulated by the civil practice law and rules.

4. The commissioner and the chair of the parole board shall work jointly to develop and implement, as soon as practicable, a risk and needs assessment instrument or instruments, which shall be empirically validated, that would be administered to incarcerated individuals upon reception into a correctional facility, and throughout their incarceration and release to community supervision, to facilitate appropriate programming both during an incarcerated individual's incarceration and community supervision, and designed to facilitate the successful integration of incarcerated individuals into the community.

5. (a) The commissioner shall not make or promulgate any policy and/or regulation requiring an incarcerated individual to waive any religious right, including, but not limited to, daily prayer as a condition for participation in any incarcerated individual program including any such program developed and/or implemented pursuant to subdivision four of this section including, but not limited to, the shock program and the industrial training program.

(b) Upon request, incarcerated individuals shall be granted exemptions for activities, including jobs, that coincide with the Sabbath and other work proscription days, including those set forth in the religious calendar.

6. (a) The commissioner shall promulgate rules and regulations to establish and maintain an annual heat mitigation plan to ensure incarcerated individuals and correctional facility staff have options available to stay cool, hydrated and safe during high heat temperatures.

Such plan shall include, to the extent possible:

(i) access to industrial fans, water, ice, and additional access to showers;

(ii) commissaries fully stocked with personal fans prior to the beginning of summer;

(iii) monitoring temperatures in housing, program and industry areas;

(iv) maintaining a list of incarcerated individuals and correctional facility staff who have medical conditions that make them more susceptible to heat and monitor their well-being;

(v) increased rounds and wellness checks; and

(vi) providing shade on exercise yards if consistent with the facility's safety and security protocols.

(b) The commissioner, as part of such heat mitigation plan, shall evaluate the financial and operational feasibility of establishing cooling stations and a permanent sustainable cooling solution at each facility, provided that upon a determination or finding that a permanent sustainable cooling solution is feasible in each facility, the commissioner shall develop a timeline to implement the findings of such evaluation.

7. (a) For the purposes of this subdivision the following terms shall have the following meanings:

(i) "Substantiated allegation" means an allegation that was investigated and determined to have occurred. An allegation is determined to have occurred based on a preponderance of the evidence;

(ii) "Unfounded allegation" means an allegation that was investigated and determined not to have occurred;

(iii) "Unsubstantiated allegation" means an allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.

(b) The commissioner shall collect data from the office of special investigations established by the department and report quarterly to the speaker of the assembly, the temporary president of the senate, and the governor regarding complaints received the previous quarter by the office. For the report period, such data and report shall include, but not be limited to:

(i) the number of substantiated, unsubstantiated, and unfounded allegations received by the office of special investigations categorized by location of the alleged incident, complaint type or allegation, subject of the allegation (i.e. incarcerated individual, security staff, civilian staff, or other), and how the allegation was received by the office;

(ii) the total number of complaints: assigned for an investigation by the office of special investigations; assigned to each division or unit within the office of special investigations; referred to the appropriate central office division head; referred to a facility superintendent or community supervision bureau chief for investigation; referred to a facility superintendent or community supervision bureau chief for other appropriate action; and referred to a state, local, or federal agency with jurisdiction. Such data shall include the location of the alleged incident and the complaint type or allegation;

(iii) the total number of investigations closed by each office of special investigations unit or division within the reporting time period;

(iv) the total number of referrals for criminal prosecution. Such data shall include the location of the alleged incident, the complaint type or allegation, and the subject of the allegation (i.e. incarcerated individual, security staff, civilian staff, or other);

(v) the total number of referrals to the department's bureau of labor relations for consideration of employee disciplinary charges including the location of the alleged incident; and

(vi) office of special investigations staffing data including the total number of staff, position type, and number of open positions.

(c) The commissioner shall report annually the average length of time to close an investigation by the office of special investigation by division for each correctional facility and any recommendations made by the office of special investigations to the relevant departmental program areas for consideration of a revision to a policy or procedure. Such report shall categorize such recommendations by facility, the nature of the recommendation, and any action taken in response to the recommendation.

§ 113. Absence of incarcerated individual for funeral and deathbed

visits authorized. The commissioner may permit any incarcerated individual confined by the department except one awaiting the sentence of death to attend the funeral of his or her father, mother, guardian or former guardian, child, brother, sister, husband, wife, grandparent, grandchild, ancestral uncle or ancestral aunt within the state, or to visit such individual during his or her illness if death be imminent; but the exercise of such power shall be subject to such rules and regulations as the commissioner shall prescribe, respecting the granting of such permission, duration of absence from the institution, custody, transportation and care of the incarcerated individual, and guarding against escape. Any expense incurred under the provisions of this section, with respect to any incarcerated individual permitted to attend a funeral or visit a relative during last illness, shall be deemed an expense of maintenance of the institution and be paid from moneys available therefor; but the superintendent, if the rules and regulations of the commissioner shall so provide, may allow the incarcerated individual or anyone in his or her behalf to reimburse the state for such expense.

§ 114. Rehabilitation programs for women; to be commensurate to those afforded men. It shall be the duty of the commissioner to assure an array of rehabilitation programs are provided among the correctional facilities in which female incarcerated individuals are confined, within the appropriations made therefor, including but not limited to vocational, academic and industrial programs, which are comparable to the programs provided to male incarcerated individuals during the course of their incarceration.

§ 115. Fiscal accounts and records. 1. The superintendent of each correctional facility shall maintain books of entry and such other records as may be deemed necessary by the commissioner of correction in order to fully account for cash receipts from all sources and all cash disbursements from accounts established in the name of the facility or the superintendent. Such books and records shall be in a form prescribed by the commissioner of correction and shall be open at all times to the commissioner and the comptroller and their authorized representatives.

2. The superintendent of each correctional facility shall also cause to be prepared an annual inventory of the equipment and furnishings received by the facility and to maintain same for the purpose of audit or examination by the commissioner, the comptroller or their authorized representatives.

3. All purchases for the use of any correctional facility shall be made in conformance with the rules and regulations in effect or established by the commissioner of correction, the comptroller and the commissioner of the office of general services. The superintendent of each correctional facility shall cause to be maintained a record of all bills and receipts for expenditures made for goods or services for the facility for the purpose of audit or examination by the commissioner, the comptroller or their designated representatives.

§ 116. incarcerated individuals' funds. The warden or superintendent of each of the institutions within the jurisdiction of the department of corrections and community supervision shall deposit at least once in each week to his or her credit as such warden, or superintendent, in such bank or banks as may be designated by the comptroller, all the moneys received by him or her as such warden, or superintendent, as incarcerated individuals' funds, and send to the comptroller and also to the commissioner monthly, a statement showing the amount so received and deposited. Such statement of deposits shall be certified by the proper officer of the bank receiving such deposit or deposits. The warden, or superintendent, shall also verify by his or her affidavit that the sum so deposited is all the money received by him or her as incarcerated individuals' funds during the month. Any bank in which such deposits shall be made shall, before receiving any such deposits, file a bond with the comptroller of the state, subject to his or her approval, for such sum as he or she shall deem necessary. Upon a certificate of approval issued by the director of the budget, pursuant to the provisions of section fifty-three of the state finance law, the amount of interest, if any, heretofore accrued and hereafter to accrue on moneys so deposited, heretofore and hereafter credited to the warden, or superintendent, by the bank from time to time, shall be available for expenditure by the warden, or superintendent, subject to the direction of the commissioner, for welfare work among the incarcerated individuals in his or her custody. The withdrawal of moneys so deposited by such warden, or superintendent, as incarcerated individuals' funds, including any interest so credited, shall be subject to his or her check. Each warden, or superintendent, shall each month provide the comptroller and also the commissioner with a record of all withdrawals from incarcerated individuals' funds. As used in this section, the term "incarcerated individuals' funds" means the funds in the possession of the incarcerated individual at the time of his or her admission into the institution, funds earned by him or her as provided in section one hundred eighty-seven of this chapter and any other funds received by him or her or on his or her behalf and deposited with such warden or superintendent in accordance with the rules and regulations of the commissioner. Whenever the total unencumbered value of funds in an incarcerated individual's account exceeds ten thousand dollars, the superintendent shall give written notice to the office of victim services.

§ 117. Estimates of expenses. The superintendent of each correctional facility shall cause to be prepared, at the direction of the commissioner, periodic estimates of expenditures in such form and detail and for such periods as the commissioner may deem appropriate.

§ 118. Custody and supervision of persons in Westchester county correctional facilities. 1. The duty of maintaining the custody and supervision of persons detained or confined in a local correctional facility as defined in subdivision sixteen of section two of this chapter and such facility is located in the county of Westchester shall be performed solely by correction officers of the Westchester county correction department. This duty, in whole or in part, shall not be delegated, transferred or assigned.

2. As used in this section, "correction officer" of the Westchester county correction department means a correction officer, correction officer-sergeant, correction officer-captain, assistant warden, associate warden or warden.

§ 119. Daily report concerning incarcerated individuals. The superintendent of each correctional facility shall make a daily report to the commissioner of correction, stating the names of all incarcerated individuals received into the facility during the preceding day, the counties in which they were tried, the crimes of which they were convicted, the nature and duration of their sentences, their former trade, employment or occupation, their habits, color, age, place of nativity, degree of instruction, and a description of their persons, and also stating whether any such incarcerated individuals have ever been confined in any state or county correctional institution, and if so, stating the offense for which they were confined, and the duration of their punishment, and also stating in such report the names of all the incarcerated individuals transferred or released to the community or delivered to other governmental authority on the preceding day, and all other particulars in relation to such persons that are required to be stated in relation to the incarcerated individuals received in the facility.

§ 120. Custody and supervision of persons in correctional facilities. 1. Except as provided in subdivisions two, three and four of this section, the duty of maintaining the custody and supervision of persons detained or confined in a correctional facility as defined in subdivision four of section two of this chapter, including a drug treatment campus as defined in subdivision twenty of section two of this chapter, or a local correctional facility as defined in subdivision sixteen of section two of this chapter shall be performed solely by police officers designated in paragraph (a), (b), (c), (d), (e), (g), (j) or (m) of subdivision thirty-four of section 1.20 of the criminal procedure law or peace officers designated in subdivision twenty-five of section 2.10 of the criminal procedure law, which persons, whether employed full-time or part-time, shall be in the competitive, non-competitive or exempt class of the civil service of New York state as determined by state law or by the state or applicable local civil service commission.

2. Nothing in this section shall limit in any way the authority of the commissioner, or any county or the city of New York, to enter into any contract authorized by subdivision eighteen of section two, section seventy-two-a, section seventy-three, section ninety-five, article five-A or article twenty-six of this chapter, or to limit the responsibility of the department of corrections and community supervision to supervise incarcerated individuals or persons released to community supervision while away from an institution pursuant to section seventy-two-a, section seventy-three or article twenty-six of this chapter or while confined at a drug treatment campus as defined in subdivision twenty of section two of this chapter.

3. Subdivision one of this section shall be inapplicable to any person who is or may be employed in a correctional facility as defined in subdivision four of section two of this chapter or a local correctional facility as defined in subdivision sixteen of section two of this chapter or who contracts or may contract to provide services at such a correctional facility, who, in either case, is (a) not a correction officer or deputy sheriff, and (b) does not have, as their primary job responsibility, the duty of maintaining the supervision of persons detained or confined in a correctional facility but who provides such supervision as a secondary, ancillary or incidental part of their primary employment responsibilities. An employee who meets the criteria provided by paragraphs (a) and (b) of this subdivision may include, but not be limited to, food service, janitorial or maintenance staff of such a correctional facility or persons who provide health care, substance abuse treatment, counseling, religious, educational or vocational services at such a correctional facility.

4. Nothing in this section shall preclude an elected or appointed sheriff, the commissioner of correction of the city of New York, the commissioner of the Westchester county department of correction, or any

other municipal official in the unclassified service, as determined by state law or by the state or applicable local civil service commission, from maintaining the custody and supervision of persons detained or confined in a local correctional facility as defined in subdivision sixteen of section two of this chapter. Provided further that nothing in this section shall be construed to limit or affect the existing authority of the mayor of the city of New York and the commissioner of the department of correction of the city of New York to appoint non-uniformed persons whose duties include overall security of the department of correction of the city of New York to positions of authority.

§ 121. Private ownership or operation of correctional facilities. Except as otherwise provided in subdivisions two, three and four of section one hundred twenty of this article or in federal law, the private operation or management of a correctional facility as defined in subdivision four of section two of this chapter or a local correctional facility, as defined in subdivision sixteen of section two of this chapter, the private ownership or operation of a facility for housing state or local incarcerated individuals or the private ownership or operation of a facility for the incarceration of other state's incarcerated individuals is prohibited.

§ 122. Control of fiscal transactions and recovery of debts. All the fiscal transactions and dealings on account of each correctional facility shall be conducted by and in the name of the superintendent thereof, who shall have control over all matters of finance relating to such facility, subject to the direction and supervision of the commissioner of correction. Such superintendent shall be capable in law of suing in all courts and places, and in all matters concerning the facility, by his name of office, and by that name shall be authorized to sue for and recover all sums of money due from any person to any former agent, agent and superintendent or superintendent of the facility, or to the people of this state on account of such facility. But it shall not be lawful in any such suit or action for any defendant to plead or give in evidence any offset or matter by way of recoupment or counterclaim except for payments made, and not credited to such defendant, or to recover any judgment against such superintendent in such suit or action other than for the costs and disbursements therein. Each superintendent shall enforce the payment of all debts due to the facility under his charge with as little delay as possible, but subject to the approbation of the commissioner of correction, he may accept any security from any debtor on granting him time, that he may deem conducive to the interests of the state. The commissioner of correction or any person authorized in the rules and regulations of the department may at any time exercise the powers granted to a superintendent hereunder.

§ 125. Incarcerated individuals' money, clothing and other property; what to be furnished them on their release. 1. The superintendent, or an employee covered by bond who is designated by the superintendent, of each correctional facility shall take charge of all moneys and other articles which may be brought to the facility by the incarcerated individuals, including but not limited to any identification, and shall cause the same, immediately upon the receipt thereof, to be entered among the receipts of the facility; which money and other articles, including but not limited to any identification materials, whenever the incarcerated individual from whom the same was received shall be discharged from the custody of the department, or the same shall be otherwise legally demanded, shall be returned by the said superintendent to such incarcerated individual or other person legally entitled to the same, and vouchers shall be taken therefor. The commissioner shall promulgate rules and regulations concerning the custody and transfer of such money and other articles, including but not limited to any identification materials in cases where incarcerated individuals are transferred from one facility to another.

2. The superintendent of each of said facilities shall furnish to each incarcerated individual who shall be discharged or released from said facility by pardon, parole, conditional release or otherwise, except such incarcerated individuals as are released for return for resentence or new trial or upon a certificate of reasonable doubt, and except such

incarcerated individuals who are released to participate in a program outside the facility who are required to return to the facility, suitable clothing adapted to the season in which he or she is discharged not to exceed sixty-five dollars in value and transportation to the county of his or her conviction or to such other place as the commissioner may designate. In addition, the commissioner shall take such steps as are necessary to ensure that incarcerated individuals have at least forty dollars available upon release.

3. In any case where an incarcerated individual is not entitled to receive clothing and transportation under subdivision two of this section, the superintendent, in his or her discretion, but subject to the rules of the department, may furnish an incarcerated individual who is released from a facility with clothing or transportation not in excess of the value for each item specified in subdivision two of this section.

§ 126. Punishment of superintendent for neglect of duty. If the superintendent of a correctional facility shall wilfully neglect or refuse to make any weekly or monthly return, estimate or statement, or to transmit any statement and certificate of such deposits to the comptroller, as hereby directed, it shall be the duty of the comptroller to notify the commissioner of correction of such omissions, and it shall be the duty of the commissioner of correction to order the superintendent to be prosecuted for the recovery of any moneys which may be in his hands belonging to the state. The superintendent of a correctional facility shall be liable to indictment and punishment for any wilful neglect of duty, or for any malpractice in the discharge of the duties of his office.

§ 130. Custody of incarcerated individual sentenced to death and commuted by governor. The commissioner shall designate appropriate correctional facilities to receive, on the order of the governor, any person convicted of any crime punishable by death, or who shall be pardoned, on condition of being confined either for life or a term of years in a correctional facility, and such person shall be confined according to the terms of such condition.

§ 132. Retaking of an escaped incarcerated individual. If an incarcerated individual escapes from a correctional facility, he or she may be arrested and returned by the superintendent or by an officer or employee of the department or by any peace officer, acting pursuant to his or her special duties, or police officer without a warrant; or a magistrate may cause such escaped incarcerated individual to be arrested and held in custody until he or she can be removed to a correctional facility, as in the case of a commitment. Rewards for the taking of such escaped incarcerated individuals may be provided for by the rules of the department.

§ 133. Superintendent to report concerning incarcerated individual believed mentally ill when crime was committed. Whenever the superintendent of a correctional facility shall have reason to believe that any incarcerated individual in the facility was mentally ill at the time he or she committed the offense for which he or she was sentenced, such superintendent shall communicate in writing to the commissioner of correction his or her reason for such opinion, and shall refer the commissioner of correction to all the sources of information with which he or she may be acquainted in relation to the mental illness of such incarcerated individual. The commissioner of correction shall then transmit such opinion and information to the governor with his or her recommendations thereon.

§ 134. Religious dietary requirements. 1. The commissary at each correctional facility shall provide food options for purchase through the facility commissary that satisfy the requirements of religious dietary needs of the incarcerated individuals housed at the facility, including, but not limited to halal foods and kosher foods. Food options available pursuant to this subdivision shall conform to the standards typically associated with the particular religious dietary requirements;

provided, however, that if one or more incarcerated individuals housed at the facility requires food products that conform to a higher religious dietary standard, such products shall also be made available through the commissary upon request of the individual requiring such options.

2. Each correctional facility shall provide food options for purchase from vending machines located in the visitor's area of the facility that satisfy the requirements of religious dietary needs of the incarcerated individuals housed at the facility, including, but not limited to halal foods and kosher foods.

3. For food options available through both the commissary and from vending machines, the prices for food options that conform to the requirements of this section shall be comparable to the cost of food options that do not conform to the requirements of this section.

§ 135. New York state department of corrections and community supervision body-worn cameras program. 1. There is hereby created within the department a body-worn cameras program. The purpose of such program is to increase accountability and evidence for departmental and law enforcement purposes, department staff, residents of the state, and those under the department's care by providing body-worn cameras to all correction officers, security supervisors, and any civilian staff as identified by the commissioner.

2. The department shall provide body-worn cameras that will be powered on and worn by correction officers and security supervisors at all times, while on duty. Incidents and activities that require staff to manually activate their body-worn cameras, regardless of the presence of fixed cameras, include but are not limited to:

(a) during any interaction with an incarcerated individual or visitor, in any location. This paragraph shall not apply when the office of special investigations or crisis intervention unit is conducting an interview with an incarcerated individual providing confidential information where a record of interview is completed;

(b) when staff observe unauthorized activity by an incarcerated individual, a department employee or any other person in the facility;

(c) during general movement of incarcerated individuals;

(d) when staff is responding to an emergency call for assistance;

(e) during all incarcerated individual escorts;

(f) during incarcerated individual transports, as directed by the facility watch commander or higher-ranking supervisor. When an employee enters a non-department facility, the employee will comply with the facility local policy on wearing the camera and recording. If a local policy does not exist, the employee shall default to department policy;

(g) when a firearm, oleoresin capsicum spray, or a baton is removed from its holster or holder;

(h) any instance where department staff feels there is an imminent threat or the need to document their time on duty;

(i) during all uses of force, including any physical aggression or use of a non-lethal or lethal weapon;

(j) during a disciplinary hearing when fixed video monitoring systems are not available where the disciplinary hearing is conducted. Such recordings will be securely preserved as part of the official hearing record for all Tier II and Tier III hearings pursuant to section 270.3 of the New York codes, rules and regulations. Audio recordings of all hearings will continue to be made regardless of whether the video monitoring system captures audio;

(k) as directed by the deputy commissioner or chief of investigations for the office of special investigations, or such deputy commissioner's or chief of investigations' designee, office of special investigations investigators may utilize body-worn camera systems pursuant to the office of special investigations policy. The use of such cameras by the office of special investigations investigators may include but is not limited to absconder/fugitive operations, facility inspections, monitoring of frisks, canine operations, high-risk in-state transports of incarcerated individuals or releasees, and investigative activities which are deemed appropriate to record;

(l) in congregate shower areas; provided, however, that staff shall provide a verbal announcement that a body-worn camera is in use and avoid intentional recording of an incarcerated individual in a state of undress unless they are required to do so as part of the performance of their duties;

(m) during all correctional emergency response team activations; and

(n) during a strip search or strip frisk; provided, however, that incarcerated individuals shall be given verbal notice that they are being recorded, and the following rules apply:

(i) The wearer of the body-worn camera shall be of the same gender as the gender designation of the facility. Video recordings of strip frisks or strip searches shall not be viewed by anyone, except as expressly authorized in writing by the facility's deputy superintendent for security or higher authority. If the recording is approved for review, the deputy superintendent for security shall assure this fact is documented to include date, time, authorization, reviewer name, explanation of why the review is necessary, and the result of such review.

(ii) A body-worn camera recording of any strip search or strip frisk shall immediately be turned over to an officer assigned to upload, charge, and issue such cameras to assigned staff for uploading and storage.

(iii) The video footage of a strip frisk or other incident depicting an incarcerated individual in a state of complete undress shall only be viewed by department staff who are of the same gender as the gender designation of the facility.

3. The commissioner shall have the authority to require civilian staff assigned to a correctional facility to wear body-worn cameras while on duty where the civilian employee has direct supervision of an incarcerated individual with only intermittent security supervision. In instances where the commissioner has required a civilian to wear a body-worn camera while on duty, such cameras shall be activated and shall record:

(a) while interacting with an incarcerated individual, regardless of the existence of fixed-video monitoring; and

(b) while such employee is in the area of a use of force incident, including any physical aggression or use of a non-lethal or lethal weapon.

4. The department shall preserve recordings of such body-worn cameras

for at least ninety days.

5. The department shall perform all necessary maintenance on the equipment used in such body-worn camera program established pursuant to this section.

6. The commissioner of the department shall solely determine the timing and appropriateness of any review or provision of body-worn camera footage to an employee prior to that employee being required to answer questions subject to paragraph (g) of subdivision one of section two hundred nine-a of the civil service law, or prior to an employment disciplinary hearing regarding the potential misconduct of such employee.

§ 135-a. Fixed camera coverage. 1. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(a) "Covered facility" means any institution or correctional facility operated by the department of corrections and community supervision.

(b) "Covered vehicle" means any vehicle used for the transport of incarcerated individuals.

(c) "Comprehensive camera coverage" means the installation, operation, and maintenance of fixed or stationary cameras sufficient to capture, without complete fixed obstruction, audio and clear visual footage of the activities and movement of all persons within all housing units, common areas, medical units, corridors, program and service areas, entrances, exits, and other spaces in which incarcerated individuals are present in each such covered facility, operating twenty-four hours a day, with the exception of the interior of cells, showers, and toilet areas and operating within each covered vehicle at any time such vehicle is occupied by any individual.

(d) "Recording request" means a formal request for access to fixed or stationary camera footage made by legal representatives, prosecutors, defendants, or their counsel, relevant to any investigation or legal proceeding involving a covered facility.

2. Within one hundred eighty days of the effective date of this

section, the commissioner shall develop a plan to establish comprehensive camera coverage for each covered facility and within each covered vehicle, which shall include the financial and operational feasibility of establishing such coverage and storing and retaining footage of such coverage, as well as reasonable projected timelines for implementation at each facility. Upon completion of the written plan, the commissioner shall promptly transmit the plan to the speaker of the assembly, the temporary president of the senate, and the governor.

3. Following transmission of the written plan required pursuant to subdivision two of this section, the commissioner shall immediately take all reasonable and necessary steps to commence implementation of the plan and to establish comprehensive camera coverage at each covered facility and within each covered vehicle in accordance with the timelines set forth therein, subject to the availability of appropriated funds. Nothing in this section shall be construed to prohibit or discourage the commissioner from initiating implementation of any component of the plan prior to such transmission.

4. Within one hundred eighty days of the effective date of this section, the commissioner shall promulgate rules and regulations to ensure that once a covered facility or covered vehicle has been equipped with comprehensive camera coverage, such covered facility or covered vehicle shall maintain a consistent state of coverage. Such rules and regulations shall, at a minimum, include:

(a) routine inspection of camera placement, functionality, image quality, and data retention;

(b) protocols for addressing non-functioning cameras, including reasonable timeframes for repair or replacement;

(c) procedures for documenting and investigating equipment failures or gaps in coverage, including blind spots;

(d) requirements for retention, storage, and secure access to camera footage, including a minimum retention period of no less than sixty days for all footage, and a requirement that any footage related to an investigation by the department's office of special investigations regarding an allegation of staff misconduct or criminal activity be preserved for no less than five years, or longer if required by law,

investigation, litigation hold, or administrative proceeding; and
(e) regular review of camera systems to ensure continued effectiveness in promoting safety, accountability, and facility operations.

5. Fixed or stationary camera footage from covered facilities and covered vehicles under this section shall be provided if a formal recording request is made and accompanied by a valid subpoena or a court order issued by a court of competent jurisdiction. Nothing in this subdivision shall be construed to prohibit or restrict the disclosure of audio recordings or video footage to any person or entity otherwise lawfully entitled to receive such recordings or footage pursuant to law, court order, or lawful process.

6. The office of the state inspector general may receive and investigate complaints from any source, or upon the inspector general's own initiative, concerning allegations of failure to adhere to the provisions of this section. The office of the state inspector general may also conduct audits of covered facilities, as appropriate, to ensure compliance with this section.

7. The commissioner shall make an annual report to the speaker of the assembly, the temporary president of the senate, the governor, and the state inspector general of the actions taken pursuant to this section including, but not limited to, documentation of incidents and investigations regarding equipment failures or gaps in coverage beginning one year after the effective date of this section; provided, however, that the report shall be prepared in a manner that does not undermine or compromise facility security, the safety of staff or incarcerated individuals, or ongoing investigations.

§ 136. Correctional education. 1. The objective of correctional education in its broadest sense should be the socialization of the incarcerated individuals through varied impressional and expressional activities, with emphasis on individual incarcerated individual needs. The objective of this program shall be the return of these incarcerated individuals to society with a more wholesome attitude toward living, with a desire to conduct themselves as good citizens, and with the skill and knowledge which will give them a reasonable chance to maintain themselves and their dependents through honest labor. To this end each incarcerated individual shall be given a program of education which, on the basis of available data, seems most likely to further the process of socialization and rehabilitation. Provided that, the commissioner, in consultation with the commissioner of education, shall develop a curricula for and require provision of an education program to all incarcerated individual, on a periodic basis, on the consequences and prevention of shaken baby syndrome which may include the viewing of a video presentation thereon. The time daily devoted to such education shall be such as is required for meeting the above objectives. The director of education, subject to the direction of the commissioner and after consultation with the commissioner of education, shall develop the curricula and the education programs that are required to meet the special needs of each correctional facility in the department. The commissioner of education, in cooperation with the commissioner and the director of education, shall set up the educational requirements for the certification of teachers in all such correctional facilities. Such educational requirements shall be sufficiently broad and comprehensive to include training in penology, sociology, psychology, philosophy, in the special subjects to be taught, and in any other professional courses as may be deemed necessary by the responsible officers, and shall include training relating to the consequences and prevention of shaken baby syndrome which may include the viewing of a video presentation thereon. No certificates for teaching service in the state institutions shall be issued unless a minimum of four years of training beyond the high school has been secured, or an acceptable equivalent. Existing requirements for the certification of teachers in the institutions shall continue in force until changed pursuant to the provisions of this section.

2. All incarcerated individuals admitted to the department serving a determinate term of imprisonment, or an indeterminate sentence of imprisonment other than a sentence of life imprisonment without parole, who have been evaluated upon admission pursuant to subdivision one of section one hundred thirty-seven of this article and are determined to

be capable of successfully completing the academic course work required for the test assessing secondary completion, shall be provided with the opportunity to complete such course work at least two months prior to the date on which such incarcerated individual may be paroled, conditionally released, released to post-release supervision pursuant to section 70.40 of the penal law, or presumptively released, pursuant to section eight hundred three of this chapter. Upon admission to the department, such incarcerated individuals will be provided with written notice that the test assessing secondary completion programs are available for all incarcerated individuals who so apply.

3. The department shall ensure that academic education programs which provide the appropriate curriculum and certified academic staff for the test assessing secondary completion instruction are available at all correctional facilities housing incarcerated individuals who are eligible as specified in subdivision two of this section. The department shall provide academic staff who are qualified to provide such instruction and who are members of the competitive class of the civil service of New York state. The department shall develop a plan for implementation of the test assessing secondary completion requirement which shall be presented to the assembly standing committee on correction and the senate standing committee on crime victims, crime and correction on or before April first, two thousand nineteen.

§ 137. Program of treatment, control, discipline at correctional facilities. 1. The commissioner shall establish program and classification procedures designed to assure the complete study of the background and condition of each incarcerated individual in the care or custody of the department and the assignment of such incarcerated individual to a program that is most likely to be useful in assisting him or her to refrain from future violations of the law. Such procedures shall be incorporated into the rules and regulations of the department and shall require among other things: consideration of the physical, mental and emotional condition of the incarcerated individual; consideration of his or her educational and vocational needs; enrollment of each incarcerated individual in assigned programs as soon as practicable; consideration of the danger he or she presents to the community or to other incarcerated individuals; the recording of continuous case histories including notations as to apparent success or failure of treatment employed; and periodic review of case histories and treatment methods used.

2. The commissioner shall provide for such measures as he or she may deem necessary or appropriate for the safety, security and control of correctional facilities and the maintenance of order therein.

3. Each incarcerated individual shall be entitled to clothing suited to the season and weather conditions and to a sufficient quantity of wholesome and nutritious food. To the extent practicable, the clothing and bedding of incarcerated individuals shall be manufactured and laundered in institutions in the department.

3-a. The commissioner shall establish a program to purchase fresh produce from farms located in the state and distribute such fresh produce to correctional facilities in the state to be utilized in the provision of wholesome and nutritious food to incarcerated individuals pursuant to the provisions of this section.

4. Whenever there shall be a sufficient number of cells or rooms in a correctional facility, each incarcerated individual shall be given sleeping accommodations in a separate cell or room, provided, however, that nothing herein contained shall be construed so as to limit the right of the department to utilize dormitory-type accommodations where necessary or where appropriate to a program of treatment.

5. No incarcerated individual in the care or custody of the department shall be subjected to degrading treatment, and no officer or other employee of the department shall inflict any blows whatever upon any incarcerated individual, unless in self defense, or to suppress a revolt or insurrection. When any incarcerated individual, or group of incarcerated individuals, shall offer violence to any person, or do or attempt to do any injury to property, or attempt to escape, or resist or disobey any lawful direction, the officers and employees shall use all

suitable means to defend themselves, to maintain order, to enforce observation of discipline, to secure the persons of the offenders and to prevent any such attempt or escape.

6. Except as provided in paragraphs (d) and (e) of this subdivision, the superintendent of a correctional facility may keep any incarcerated individual confined in a cell or room, apart from the accommodations provided for incarcerated individuals who are participating in programs of the facility, for such period as may be necessary for maintenance of order or discipline, but in any such case the following conditions shall be observed:

(a) The incarcerated individual shall be supplied with a sufficient quantity of wholesome and nutritious food;

(b) Adequate sanitary and other conditions required for the health of the incarcerated individual shall be maintained;

(c) Where such confinement is for a period in excess of twenty-four hours, the superintendent shall arrange for the facility health services director, or a registered nurse or physician's associate approved by the facility health services director to visit such incarcerated individual at the expiration of twenty-four hours and at least once in every twenty-four hour period thereafter, during the period of such confinement, to examine into the state of health of the incarcerated individual, and the superintendent shall give full consideration to any recommendation that may be made by the facility health services director for measures with respect to dietary needs or conditions of confinement of such incarcerated individual required to maintain the health of such incarcerated individual; and

(d) (i) Except as set forth in clause (E) of subparagraph (ii) of this paragraph, the department, in consultation with mental health clinicians, shall divert or remove incarcerated individuals with serious mental illness, as defined in paragraph (e) of this subdivision, from segregated confinement or confinement in a residential rehabilitation unit, where such confinement could potentially be for a period in excess of thirty days, to a residential mental health treatment unit. Nothing in this paragraph shall be deemed to prevent the disciplinary process from proceeding in accordance with department rules and regulations for disciplinary hearings.

(ii) (A) Upon placement of an incarcerated individual into segregated confinement or a residential rehabilitation unit at a level one or level two facility, a suicide prevention screening instrument shall be administered by staff from the department or the office of mental health who has been trained for that purpose. If such a screening instrument reveals that the incarcerated individual is at risk of suicide, a mental health clinician shall be consulted and appropriate safety precautions shall be taken. Additionally, within one business day of the placement of such an incarcerated individual into segregated confinement at a level one or level two facility or a residential rehabilitation unit, the incarcerated individual shall be assessed by a mental health clinician.

(B) Upon placement of an incarcerated individual into segregated confinement or a residential rehabilitation unit at a level three or level four facility, a suicide prevention screening instrument shall be administered by staff from the department or the office of mental health who has been trained for that purpose. If such a screening instrument reveals that the incarcerated individual is at risk of suicide, a mental health clinician shall be consulted and appropriate safety precautions shall be taken. All incarcerated individuals placed in segregated confinement or a residential rehabilitation unit at a level three or level four facility shall be assessed by a mental health clinician, within seven days of such placement into segregated confinement.

(C) At the initial assessment, if the mental health clinician finds that an incarcerated individual suffers from a serious mental illness, that person shall be diverted or removed from segregated confinement or a residential rehabilitation unit and a recommendation shall be made whether exceptional circumstances, as described in clause (E) of this subparagraph, exist. In a facility with a joint case management committee, such recommendation shall be made by such committee. In a facility without a joint case management committee, the recommendation shall be made jointly by a committee consisting of the facility's highest ranking mental health clinician, the deputy superintendent for security, and the deputy superintendent for program services, or their equivalents. Any such recommendation shall be reviewed by the joint central office review committee. The administrative process described in this clause shall be completed within seven days of the initial assessment, and if the result of such process is that the incarcerated individual should be removed from segregated confinement or a residential rehabilitation unit, such removal shall occur as soon as practicable, but in no event more than seventy-two hours from the completion of the administrative process. Pursuant to paragraph (h) of this subdivision, nothing in this section shall permit the placement of an incarcerated person with serious mental illness into segregated confinement at any time, even for the purposes of assessment.

(D) If an incarcerated individual with a serious mental illness is not diverted or removed to a residential mental health treatment unit, such incarcerated individual shall be diverted to a residential rehabilitation unit and reassessed by a mental health clinician within fourteen days of the initial assessment and at least once every fourteen days thereafter. After each such additional assessment, a recommendation as to whether such incarcerated individual should be removed from a residential rehabilitation unit shall be made and reviewed according to the process set forth in clause (C) of this subparagraph.

(E) A recommendation or determination whether to remove an incarcerated individual from segregated confinement or a residential rehabilitation unit shall take into account the assessing mental health clinicians' opinions as to the incarcerated individual's mental condition and treatment needs, and shall also take into account any safety and security concerns that would be posed by the incarcerated individual's removal, even if additional restrictions were placed on the incarcerated individual's access to treatment, property, services or privileges in a residential mental health treatment unit. A recommendation or determination shall direct the incarcerated individual's removal from segregated confinement or a residential rehabilitation unit except in the following exceptional circumstances: (1) when the reviewer finds that removal would pose a substantial risk to the safety of the incarcerated individual or other persons, or a substantial threat to the security of the facility, even if additional restrictions were placed on the incarcerated individual's access to treatment, property, services or privileges in a residential mental health treatment unit; or (2) when the assessing mental health clinician determines that such placement is in the incarcerated individual's best interests based on his or her mental condition and that removing such incarcerated individual to a residential mental health treatment unit would be detrimental to his or her mental condition. Any determination not to remove an incarcerated individual with serious mental illness from a residential rehabilitation unit shall be documented in writing and include the reasons for the determination.

(iii) Incarcerated individuals with serious mental illness who are not diverted or removed from a residential rehabilitation unit shall be offered a heightened level of mental health care, involving a minimum of three hours daily of out-of-cell therapeutic treatment and programming. This heightened level of care shall not be offered only in the following circumstances:

(A) The heightened level of care shall not apply when an incarcerated individual with serious mental illness does not, in the reasonable judgment of a mental health clinician, require the heightened level of care. Such determination shall be documented with a written statement of the basis of such determination and shall be reviewed by the Central New York Psychiatric Center clinical director or his or her designee. Such a determination is subject to change should the incarcerated individual's clinical status change. Such determination shall be reviewed and documented by a mental health clinician every thirty days, and in consultation with the Central New York Psychiatric Center clinical director or his or her designee not less than every ninety days.

(B) The heightened level of care shall not apply in exceptional circumstances when providing such care would create an unacceptable risk to the safety and security of incarcerated individuals or staff. Such determination shall be documented by security personnel together with the basis of such determination and shall be reviewed by the facility superintendent, in consultation with a mental health clinician, not less than every seven days for as long as the incarcerated individual remains in a residential rehabilitation unit. The facility shall attempt to resolve such exceptional circumstances so that the heightened level of care may be provided. If such exceptional circumstances remain unresolved for thirty days, the matter shall be referred to the joint central office review committee for review.

(iv) All incarcerated individuals in segregated confinement in a level one or level two facility or a residential rehabilitation unit who are not assessed with a serious mental illness at the initial assessment shall be offered at least one interview with a mental health clinician within seven days of their initial mental health assessment, unless the mental health clinician at the most recent interview recommends an earlier interview or assessment. All incarcerated individuals in a residential rehabilitation unit in a level three or level four facility who are not assessed with a serious mental illness at the initial assessment shall be offered at least one interview with a mental health clinician within thirty days of their initial mental health assessment, and additional interviews at least every ninety days thereafter, unless the mental health clinician at the most recent interview recommends an earlier interview or assessment.

(e) An incarcerated individual has a serious mental illness when he or she has been determined by a mental health clinician to meet at least one of the following criteria:

(i) he or she has a current diagnosis of, or is diagnosed at the initial or any subsequent assessment conducted during the incarcerated individual's segregated confinement with, one or more of the following types of Axis I diagnoses, as described in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, and such diagnoses shall be made based upon all relevant clinical factors, including but not limited to symptoms related to such diagnoses:

(A) schizophrenia (all sub-types),

(B) delusional disorder,

(C) schizophreniform disorder,

(D) schizoaffective disorder,

(E) brief psychotic disorder,

(F) substance-induced psychotic disorder (excluding intoxication and withdrawal),

(G) psychotic disorder not otherwise specified,

(H) major depressive disorders, or

(I) bipolar disorder I and II;

(ii) he or she is actively suicidal or has engaged in a recent, serious suicide attempt;

(iii) he or she has been diagnosed with a mental condition that is frequently characterized by breaks with reality, or perceptions of reality, that lead the individual to experience significant functional impairment involving acts of self-harm or other behavior that have a seriously adverse effect on life or on mental or physical health;

(iv) he or she has been diagnosed with an organic brain syndrome that results in a significant functional impairment involving acts of self-harm or other behavior that have a seriously adverse effect on life or on mental or physical health;

(v) he or she has been diagnosed with a severe personality disorder that is manifested by frequent episodes of psychosis or depression, and results in a significant functional impairment involving acts of self-harm or other behavior that have a seriously adverse effect on life or on mental or physical health; or

(vi) he or she has been determined by a mental health clinician to have otherwise substantially deteriorated mentally or emotionally while confined in segregated confinement and is experiencing significant functional impairment indicating a diagnosis of serious mental illness and involving acts of self-harm or other behavior that have a serious adverse effect on life or on mental or physical health.

(f) The superintendent shall make a full report to the commissioner at least once a week concerning the condition of such incarcerated individual and shall forthwith report to the commissioner any recommendation relative to health maintenance or health care delivery made by the facility health services director and any recommendation relative to mental health treatment or confinement of an incarcerated individual with a serious mental illness made by the mental health clinician pursuant to paragraphs (d) and (e) of this subdivision that is not endorsed or carried out, as the case may be, by the superintendent.

(g) Within twenty-four hours of disciplinary confinement, keeplock pending a disciplinary hearing, placement in a segregated confinement unit for administrative purposes, or placement in a residential mental health treatment unit, and at weekly intervals thereafter for the duration of such confinement, an incarcerated individual shall be permitted to make at least one personal phone call, except when to do so would create an unacceptable risk to the safety and security of incarcerated individuals or staff.

(h) Persons in a special population as defined in subdivision thirty-three of section two of this chapter shall not be placed in segregated confinement for any length of time, except in keeplock for a period prior to a disciplinary hearing pursuant to paragraph (l) of this subdivision. Individuals in a special population who are in keeplock prior to a disciplinary hearing shall be given seven hours a day out-of-cell time or shall be transferred to a residential rehabilitation unit or residential mental health treatment unit as expeditiously as possible, but in no case longer than forty-eight hours from the time an individual is admitted to keeplock.

(i) (i) No person may be placed in segregated confinement for longer than necessary and no more than fifteen consecutive days. Nor shall any person be placed in segregated confinement for more than twenty total days within any sixty day period except as otherwise provided in subparagraph (ii) of this paragraph. At these limits, he or she must be released from segregated confinement or diverted to a separate residential rehabilitation unit. If placement of such person in segregated confinement would exceed the twenty-day limit and the department establishes that the person committed an act defined in subparagraph (ii) of paragraph (k) of this subdivision, the department may place the person in segregated confinement until admission to a residential rehabilitation unit can be effectuated. Such admission to a residential rehabilitation unit shall occur as expeditiously as possible and in no case take longer than forty-eight hours from the time such person is placed in segregated confinement.

(ii) For offenses determined pursuant to paragraph (l) of this subdivision to constitute a violent felony act defined in subparagraph (ii) of paragraph (k) of this subdivision, if occurring more than one time within any sixty day period, up to an additional fifteen consecutive days in segregated confinement may occur for each such additional incident. If such subsequent incident takes place in a residential rehabilitation unit or general population, the person may be returned to segregated confinement for up to fifteen consecutive days. If such subsequent incident takes place in segregated confinement and causes physical injury to another person, the person may receive up to an additional fifteen consecutive days in segregated confinement, provided however that the person must spend at least fifteen days in a residential rehabilitation unit in between each placement of up to fifteen consecutive days in segregated confinement. Custody under this subparagraph shall otherwise be in accordance with this chapter.

(j) (i) All segregated confinement and residential rehabilitation units shall create the least restrictive environment necessary for the safety of incarcerated persons, staff, and the security of the facility.

(ii) Persons in segregated confinement shall be offered out-of-cell programming at least four hours per day, including at least one hour for recreation. Persons admitted to residential rehabilitation units shall be offered at least six hours of daily out-of-cell congregate programming, services, treatment, recreation, activities and/or meals, with an additional minimum of one hour for recreation. Recreation in all residential rehabilitation units shall take place in a congregate setting, unless exceptional circumstances mean doing so would create a significant and unreasonable risk to the safety and security of other incarcerated persons, staff, or the facility. Persons in segregated confinement and residential rehabilitation units shall be offered programming led by program or therapeutic staff five days per week, except on recognized state legal holidays. All other out-of-cell time may include peer-led programs, time in a day room or out-of-cell recreation area with other people, congregate meals, volunteer programs, or other congregate activities.

(iii) No limitation on services, treatment, or basic needs such as clothing, food and bedding shall be imposed as a form of punishment. If provision of any such services, treatment or basic needs to an individual would create a significant and unreasonable risk to the safety and security of incarcerated persons, staff, or the facility, such services, treatment or basic needs may be withheld until it reasonably appears that the risk has ended. The department shall not impose restricted diets or any other change in diet as a form of punishment. Persons in a residential rehabilitation unit shall have access to all of their personal property unless an individual determination is made that having a specific item would pose a significant and unreasonable risk to the safety of incarcerated persons or staff or the security of the unit.

(iv) Upon admission to a residential rehabilitation unit, program and mental health staff shall administer assessments and develop an individual rehabilitation plan in consultation with the resident, based upon his or her medical, mental health, and programming needs. Such plan shall identify specific goals and programs, treatment, and services to be offered, with projected time frames for completion and discharge from the residential rehabilitation unit.

(v) An incarcerated person in a residential rehabilitation unit shall have access to programs and work assignments comparable to core programs and types of work assignments in general population. Such incarcerated persons shall also have access to additional out-of-cell, trauma-informed therapeutic programming aimed at promoting personal development, addressing underlying causes of problematic behavior resulting in placement in a residential rehabilitation unit, and helping prepare for discharge from the unit and to the community.

(vi) If the department establishes that a person committed an act defined in subparagraph (ii) of paragraph (k) of this subdivision while in segregated confinement or a residential rehabilitation unit and poses a significant and unreasonable risk to the safety and security of other incarcerated persons or staff, the department may restrict such person's participation in programming and out-of-cell activities as necessary for the safety of other incarcerated persons and staff. If such restrictions are imposed, the department must provide at least four hours out-of-cell time daily, including at least two hours of therapeutic programming and two hours of recreation, and must make reasonable efforts to reinstate access to programming as soon as possible. In no case may such restrictions extend beyond fifteen days unless the person commits a new act defined herein justifying restrictions on program access, or if the commissioner and, when appropriate, the commissioner of mental health personally reasonably determine that the person poses an extraordinary and unacceptable risk of imminent harm to the safety or security of incarcerated persons or staff. Any extension of program restrictions beyond fifteen days must be meaningfully reviewed and approved at least every fifteen days by the commissioner and, when appropriate, by the commissioner of mental health. Each review must consider the impact of therapeutic programming provided during the fifteen-day period on the person's risk of imminent harm and the commissioner must articulate in writing, with a copy provided to the incarcerated person, the specific reason why the person currently poses an extraordinary and unacceptable risk of imminent harm to the safety or security of incarcerated persons or staff. In no case may restrictions imposed by the commissioner extend beyond ninety days unless the person commits a new act defined herein justifying restrictions on program access.

(vii) Restraints shall not be used when incarcerated persons are participating in out-of-cell activities within a residential rehabilitation unit unless an individual assessment is made that restraints are required because of a significant and unreasonable risk to the safety and security of other incarcerated persons or staff.

(k) (i) The department may place a person in segregated confinement for up to three consecutive days and no longer than six days in any thirty day period if, pursuant to an evidentiary hearing, it determines that the person violated department rules which permit a penalty of segregated confinement. The department may not place a person in segregated confinement for longer than three consecutive days or six days total in a thirty day period unless the provisions of subparagraph (ii) of this paragraph are met.

(ii) The department may place a person in segregated confinement beyond the limits of subparagraph (i) of this paragraph or in a residential rehabilitation unit only if, pursuant to an evidentiary hearing, it determines by written decision that the person committed one of the following acts and if the commissioner or his or her designee determines in writing based on specific objective criteria the acts were so heinous or destructive that placement of the individual in general population housing creates a significant risk of imminent serious physical injury to staff or other incarcerated persons, and creates an unreasonable risk to the security of the facility:

(A) causing or attempting to cause serious physical injury or death to another person or making an imminent threat of such serious physical injury or death if the person has a history of causing such physical injury or death and the commissioner and, when appropriate, the commissioner of mental health or their designees reasonably determine that there is a strong likelihood that the person will carry out such threat. The commissioner of mental health or his or her designee shall be involved in such determination if the person is or has been on the mental health caseload or appears to require psychiatric attention. The department and the office of mental health shall promulgate rules and regulations pertaining to this clause;

(B) compelling or attempting to compel another person, by force or threat of force, to engage in a sexual act;

(C) extorting another, by force or threat of force, for property or money;

(D) coercing another, by force or threat of force, to violate any rule;

(E) leading, organizing, inciting, or attempting to cause a riot, insurrection, or other similarly serious disturbance that results in the taking of a hostage, major property damage, or physical harm to another person;

(F) procuring a deadly weapon or other dangerous contraband that poses a serious threat to the security of the institution; or

(G) escaping, attempting to escape or facilitating an escape from a facility or escaping or attempting to escape while under supervision outside such facility.

For purposes of this section, attempting to cause a serious disturbance or to escape shall only be determined to have occurred if there is a clear finding that the incarcerated individual had the intent to cause a serious disturbance or the intent to escape and had completed significant acts in the advancement of the attempt to create a serious disturbance or escape. Evidence of withdrawal or abandonment of a plan to cause a serious disturbance or to escape shall negate a finding of intent.

(iii) No person may be placed in segregated confinement or a residential rehabilitation unit based on the same act or incident that was previously used as the basis for such placement.

(iv) No person may be held in segregated confinement for protective custody. Any unit used for protective custody must, at a minimum, conform to requirements governing residential rehabilitation units.

(l) All hearings to determine if a person may be placed in segregated confinement shall occur prior to placement in segregated confinement unless a security supervisor, with written approval of a facility superintendent or designee, reasonably believes the person fits the specified criteria for segregated confinement in subparagraph (ii) of paragraph (k) of this subdivision. If a hearing does not take place prior to placement, it shall occur as soon as reasonably practicable and at most within five days of such placement unless the charged person seeks a postponement of the hearing. Persons at such hearings shall be permitted to be represented by any attorney or law student, or by any paralegal or incarcerated person unless the department reasonably disapproves of such paralegal or incarcerated person based upon objective written criteria developed by the department.

(m) (i) Any sanction imposed on an incarcerated person requiring segregated confinement shall run while the person is in a residential rehabilitation unit and the person shall be discharged from the unit before or at the time such sanction expires. If a person successfully completes his or her rehabilitation plan before the sanction expires, the person shall have a right to be discharged from the unit upon such completion.

(ii) If an incarcerated person has not been discharged from a residential rehabilitation unit within one year of initial admission to such a unit or is within sixty days of a fixed or tentatively approved date for release from a correctional facility, he or she shall have a right to be discharged from the unit unless he or she committed an act listed in subparagraph (ii) of paragraph (k) of this subdivision within the prior one hundred eighty days and he or she poses a significant and unreasonable risk to the safety or security of incarcerated persons or staff. In any such case the decision not to discharge such person shall be immediately and automatically subjected to an independent review by the commissioner and the commissioner of mental health or their designees. A person may remain in a residential rehabilitation unit beyond the time limits provided in this section if both commissioners or both of their designees approve this decision. In extraordinary circumstances, a person who has not committed an act listed in subparagraph (ii) of paragraph (k) of this subdivision within the prior one hundred eighty days, may remain in a residential rehabilitation unit beyond the time limits provided in this section if both the commissioner and the commissioner of mental health personally determine that such individual poses an extraordinary and unacceptable risk of imminent harm to the safety or security of incarcerated persons or staff.

(iii) There shall be a meaningful periodic review of the status of each incarcerated person in a residential rehabilitation unit at least every sixty days to assess the person's progress and determine if the person should be discharged from the unit. Following such periodic review, if the person is not discharged from the unit, program and mental health staff shall specify in writing the reasons for the determination and the program, treatment, service, and/or corrective action required before discharge. The incarcerated person shall be given access to the programs, treatment and services specified, and shall have a right to be discharged from the residential rehabilitation unit upon the successful fulfillment of such requirements.

(iv) When an incarcerated person is discharged from a residential rehabilitation unit, any remaining time to serve on any underlying disciplinary sanction shall be dismissed. If an incarcerated person substantially completes his or her rehabilitation plan, he or she shall have any associated loss of good time restored upon discharge from the unit.

(n) All special housing unit, keeplock unit and residential rehabilitation unit staff and their supervisors shall undergo specialized training prior to assignment to such unit, and regular specialized training thereafter, on substantive content developed in consultation with relevant experts, on topics including, but not limited to, the purpose and goals of the non-punitive therapeutic environment, trauma-informed care, restorative justice, and dispute resolution methods. Prior to presiding over any hearings, all hearing officers shall undergo a minimum of thirty-seven hours of training, with one additional day of training annually thereafter, on relevant topics, including but not limited to, the physical and psychological effects of segregated confinement, procedural and due process rights of the accused, and restorative justice remedies.

(o) The department shall publish monthly reports on its website, with semi-annual and annual cumulative reports, of the total number of people who are in segregated confinement and the total number of people who are in residential rehabilitation units on the first day of each month. The reports shall provide a breakdown of the number of people in segregated confinement and in residential rehabilitation units by: (i) age; (ii) race; (iii) gender; (iv) mental health treatment level; (v) special health accommodations or needs; (vi) need for and participation in substance use disorder programs; (vii) pregnancy status; (viii) continuous length of stay in residential treatment units as well as length of stay in the past sixty days; (ix) number of days in segregated confinement; (x) a list of all incidents resulting in sanctions of segregated confinement by facility and date of occurrence; (xi) the number of incarcerated persons in segregated confinement by facility; and (xii) the number of incarcerated persons in residential rehabilitation units by facility.

§ 138. Institutional rules and regulations for incarcerated individuals at all correctional facilities. 1. All institutional rules and regulations defining and prohibiting incarcerated individuals misconduct shall be published and posted in prominent locations within the institution and set forth in both the English and Spanish language.

2. All incarcerated individuals shall be provided with written copies of these rules and regulations upon admission to the institution and all incarcerated individuals presently incarcerated in a correctional facility shall be provided with written copies of these rules and regulations.

3. Facility rules shall be specific and precise giving all incarcerated individuals actual notice of the conduct prohibited. Facility rules shall state the range of disciplinary sanctions which can be imposed for violation of each rule.

4. Incarcerated individuals shall not be disciplined for making written or oral statements, demands, or requests involving a change of institutional conditions, policies, rules, regulations, or laws affecting an institution.

5. No incarcerated individual shall be disciplined except for a violation of a published and posted written rule or regulation, a copy of which has been provided the incarcerated individual.

6. All rules and regulations pertaining to incarcerated individuals established by the department of corrections and community supervision and all rules and regulations pertaining to incarcerated individuals established by any institutional staff at any state correctional facility shall be reviewed annually by the commissioner of the department of corrections and community supervision.

7. De-escalation, intervention, informational reports and the withdrawal of incentives shall be the preferred methods of responding to misbehavior unless the department determines that non-disciplinary interventions have failed, or that non-disciplinary interventions would not succeed and the misbehavior involved an act listed in subparagraph (ii) of paragraph (k) of subdivision six of section one hundred thirty-seven of this article, in which case, as a last resort, the department shall have the authority to issue misbehavior reports, pursue disciplinary charges, or impose new or additional segregated confinement sanctions.

§ 138-a. Notification of visitation policies. The commissioner of the department of corrections and community supervision shall establish and maintain on its public website information concerning specific visitation rules, regulations, policies and procedures for each correctional facility. Such information shall include, but not be limited to, visiting days and hours, length and number of allowable visits, maximum number of people per visit, dress code, guidelines for people with medical and other special needs including physical access and restrictions on medications while in the facility, infant care, and items which are restricted or prohibited by visitors. The commissioner shall regularly update the information provided on the website pursuant to this section in order to ensure that such information is accurate and that visitors are notified of any new or changed rules, regulations, policies and procedures. In addition, the commissioner shall designate a telephone number or numbers that persons may call for information about the visiting rules, regulations, policies and procedures at the various facilities. Such telephone number or numbers shall also be posted on the website.

§ 138-b. Permitted entry by peer support advocates. Peer support advocates who are certified or licensed by a state agency, or a state authorized entity including the New York certification board, or a nationally recognized accrediting agency or association, and are participating in the provision of corrections-based substance use disorder treatment and transition services, including but not limited to medication assistant treatment, pursuant to section 19.18-c of the mental hygiene law, shall not be unreasonably denied entry into correctional facilities solely based on such advocates' history of prior incarceration.

§ 139. Grievance procedures. 1. The commissioner shall establish, in each correctional institution under his or her jurisdiction, grievance resolution committees to resolve grievances of persons within such correctional institution. Such grievance resolution committees shall consist of five persons four of whom shall be entitled to vote, two of whom shall be incarcerated individuals of such correctional institution, and a non-voting chairman.

2. The commissioner shall promulgate rules and regulations establishing such procedures for the fair, simple and expeditious resolution of grievances as shall be deemed appropriate, having due regard for the constitutions and laws of the United States and of the state of New York. Such procedures shall include but not be limited to setting time limitations for the filing of complaints and replies thereto and for each stage of the grievance resolution process.

3. A person aggrieved by the decision of a grievance resolution committee may apply to the commissioner for review of the decision. The commissioner or his deputy may take such action as he deems appropriate to fairly and expeditiously resolve the grievance to the satisfaction of all parties.

4. The commission shall annually evaluate and assess the grievance procedures in correctional facilities, and make any recommendations with respect to the proper operation or improvement of the grievance procedures and provide such report to the commissioner and the chairmen of the senate codes and crime and corrections and assembly codes and correction committees.

5. The commissioner shall semi-annually report to the chairmen of the senate codes and crime and corrections committees and the assembly codes and correction committees on the nature and type of incarcerated individual grievances and unusual incidents, by facility.

6. The commissioner shall, upon request, provide the commission with any information or data necessary for the commission to carry out the mandates of this section.

§ 140. Provision for routine medical, dental and mental health services and treatment. 1. Where an incarcerated individual who is not yet eighteen years of age has been committed or transferred to the custody of the department and no medical consent has been obtained prior to commitment or transfer, the commitment order shall be deemed to grant to the minor the capacity to consent to routine medical, dental and mental health services and treatment to such an individual.

2. Subject to the regulations of the department of health, routine medical, dental and mental health services and treatment is defined for the purposes of this section to mean any routine diagnosis or treatment, including without limitation the administration of medications or nutrition, the extraction of bodily fluids for analysis, and dental care performed with a local anesthetic. Routine mental health treatment shall not include psychiatric administration of medication unless it is part of an ongoing mental health plan or unless it is otherwise authorized by law.

3. (a) At any time prior to the date the incarcerated individual becomes eighteen years of age, the incarcerated individual's parent or legal guardian may institute legal proceedings pursuant to section 70.20 of the penal law objecting to the provision of routine medical, dental or mental health services and treatment being provided to the incarcerated individual.

(b) Such notice of motion shall be served on the incarcerated individual, the facility and the department not less than seven days prior to the return date of the motion. The persons on whom the notice of motion is served shall answer the motion not less than two days before the return date. On examining the motion and answer and, in its discretion, after hearing argument, the court shall enter an order, granting or denying the motion.

4. Nothing in this section shall preclude an incarcerated individual from consenting on his or her own behalf to any medical, dental or mental health service and treatment where otherwise authorized by law to do so.

5. The department shall, to the best of its ability, provide all sentenced incarcerated individuals with educational programs focused on the importance of preventative health care measures that includes, but is not limited to, breast self-examinations.

§ 141. Contagious disease in facility. In case any pestilence or contagious disease shall break out among the incarcerated individuals in any of the correctional facilities, or in the vicinity of such facilities, the commissioner of correction may cause the incarcerated individuals confined in such facility, or any of them, to be removed to some suitable place of security, where such of them as may be sick shall receive all necessary care and medical assistance; such incarcerated individuals shall be returned as soon as may be feasible to the facility from which they were taken, to be confined therein according to their respective sentences.

§ 142. Fire in facility. Whenever by reason of any correctional facility, or any building contiguous to such facility, being on fire, there shall be reason to apprehend that the incarcerated individuals may be injured or endangered by such fire, or may escape, it shall be the duty of the superintendent of such facility to remove such incarcerated individuals to some safe and convenient place, and there confine them until the necessity of such removal shall have ceased.

§ 143. Custody of persons convicted of crimes against the United States. The commissioner is authorized to enter into agreements for the care and custody of persons convicted and sentenced to imprisonment by the United States courts in this state. Persons may be confined in correctional facilities pursuant to any such agreement and all provisions of law applicable to the care and custody of incarcerated individuals sentenced by courts of this state, except provisions governing the duration of sentence and other related incidents of the sentence provided by federal law, shall apply to the care and custody of such persons.

§ 146. Persons authorized to visit correctional facilities. 1. The following persons shall be authorized to visit at pleasure all correctional facilities: The governor and lieutenant-governor, commissioner of general services, secretary of state, comptroller and attorney-general, members of the commission of correction, members of the legislature and their accompanying staff and any employee of the department as requested by the member of the legislature if the member requests to be so accompanied, provided that such request does not impact upon the department's ability to supervise, manage and control its facilities as determined by the commissioner, judges of the court of appeals, supreme court and county judges, district attorneys and every clergyman or minister, as such terms are defined in section two of the religious corporations law, having charge of a congregation in the county wherein any such facility is situated. No other person not otherwise authorized by law shall be permitted to enter a correctional facility except by authority of the commissioner of correction under such regulations as the commissioner shall prescribe.

2. Notwithstanding any other provision of law to the contrary, on each September thirteenth anniversary date of the nineteen hundred seventy-one retaking of Attica correctional facility, in the absence of an emergency situation or other exigent circumstance, the commissioner shall ensure that any surviving state employees who were held as hostages and any immediate family members, as that term is defined in subdivision four of section 120.40 of the penal law, of any of the state

employees who were held hostage for any period by rioting incarcerated individuals during the period from September ninth through September thirteenth, nineteen hundred seventy-one, shall be afforded access to the outside grounds of Attica correctional facility to conduct a private commemorative ceremony in front of the Attica monument upon which are inscribed the names of employees who died as a result of the uprising and subsequent retaking.

3. a. Notwithstanding any other provision of law to the contrary, the correctional association shall be permitted to access, visit, inspect, and examine all state correctional facilities with twenty-four hours advance notice to the department. For any visit that will include units or areas staffed by the office of mental health, such notice shall also be provided to the office of mental health. Up to twelve people may comprise the visiting party; provided, however, that only four people from the party may enter a special housing facility or unit at the same time. Prior to the visitation authorized pursuant to this subdivision, the correctional association shall provide to the department on, at least, an annual basis a list of people who will be visiting the facility or facilities, including names, dates of birth, driver's license numbers and their designation as an employee, board member, or designee in order for the department to perform prompt background checks. The department may place restrictions on such visits and inspections when a facility is locked down or experiencing a facility wide emergency. In addition, the department may restrict access to a portion of a facility in an emergency situation for the duration of the emergency. For the purpose of this subdivision, an emergency shall be determined by the commissioner or the commissioner's designee and defined as a significant risk to the safety or security of the facility, or the health, safety or security of staff or incarcerated individuals, or an event that significantly compromises the operations of the facility.

b. Upon twenty-four hours advance notice, at the commencement or conclusion of any visits to, or inspections and examinations of, state correctional facilities, the superintendent and executive team, to the extent practicable, shall meet with the correctional association. Upon twenty-four hours advance notice, and with the consent of the party, the correctional association may meet privately, without representatives of the central office present, with representatives of the office of mental health and any other entities or agencies that are providing services in a facility, the incarcerated individual liaison committee and representatives of the incarcerated individual grievance resolution committee or any other organization of incarcerated individuals recognized by the department.

c. During the course of any such visit, inspection or examination, and upon consent of the person being interviewed, the correctional association shall have the power to interview and converse publicly or confidentially with any correctional employee or administrator, any incarcerated individual, and any other person providing, supervising, or monitoring services in a correctional facility, whether or not employed by such facility. Such interviews shall not be restricted by the department or the office of mental health or any other agency or attended by anyone on behalf of the department or the office of mental health or any other agency, nor shall there be any retaliation or adverse action taken by the department or other state agency against anyone who speaks with the correctional association. The department may not limit the number of individuals the correctional association may interview or the duration of the interviews, in any manner unreasonable under the circumstances. During the course of any visit, inspection or examination, the correctional association shall have the power to conduct private, confidential meetings reasonable in number under the circumstances with incarcerated individuals in housing units and in attorney visiting rooms or other rooms in the facility in which their conversations will remain confidential. No department employee may attend or listen to any such meeting without the consent of the correctional association.

d. The correctional association, on a quarterly basis, may request and, to the extent practicable, receive from the department in a form and manner prescribed by the department the following information and records:

(i) individual-level records for all individuals admitted into custody during the previous quarter, under custody at the end of the previous quarter, released from custody during the previous quarter, and on parole at the end of the previous quarter;

(ii) departmental staffing levels at each facility at the end of the previous quarter;

(iii) under custody deaths at each facility during the previous quarter;

(iv) report-level unusual incidents during the previous quarter;

(v) the number and type of disciplinary hearings held at each facility during the previous quarter, including charges and sanctions imposed;

(vi) the number and type of grievances filed at each facility during the previous quarter; and

(vii) incarcerated individuals at each facility enrolled in programming and academic and vocational education during the previous quarter.

e. The correctional association shall periodically, but not less than every five years, conduct inspections of each state correctional facility and issue reports and recommendations to the governor, the legislature and the public about the conditions and issues at correctional facilities. When preparing such formal reports and recommendations, the correctional association shall submit a tentative copy of such report and recommendations to the commissioner. The commissioner may submit a written response to such tentative report within sixty days of the receipt thereof. When the correctional association thereafter submits its final report and recommendations, it shall contain a complete copy of the response, if any, submitted to the tentative report and recommendations.

f. The correctional association may send surveys or questionnaires to people in custody or employees concerning conditions of confinement, working conditions, or other subjects within the scope of their mission without prior approval of the department. People incarcerated shall be permitted to confidentially complete and return to the correctional association such surveys. The correctional association may also receive free phone calls from incarcerated individuals through a hotline set up by the correctional association for individuals to use if they choose to contact them, and the department shall not track or monitor such calls. Physical mail received and sent to the correctional association is defined as privileged correspondence, and any and all processing controls, allowances for limited free postage, and advances of incarcerated individual funds for postage shall apply to privileged correspondence received and sent to the correctional association. For the purposes of this section, identical incoming blank surveys and questionnaires shall not be defined as privileged correspondence.

g. The access, visits, and inspection of state correctional facilities by the correctional association pursuant to this subdivision shall be undertaken solely in furtherance of the correctional association's lawful powers, duties and obligations, and information obtained pursuant to these powers shall be used solely in furtherance of the correctional association's mission. Employees, board members and designees shall be required to sign an acknowledgement of the foregoing as a condition of entry into a correctional facility pursuant to this subdivision.

§ 147. Noncitizen incarcerated individuals of correctional facilities. The commissioner shall within three months after admission of a noncitizen incarcerated individual to a correctional facility cause an investigation to be made of the record and past history of such noncitizen and shall upon the termination of such investigation cause the record of such noncitizen, together with all facts disclosed by such investigation, and his or her recommendations as to deportation, to be forwarded to the United States immigration authorities having such matters in charge.

§ 148. Psychiatric and diagnostic clinics. The commissioner of corrections and community supervision is hereby authorized and directed to assist and cooperate with the commissioner of mental health in the establishment and conduct of such psychiatric and diagnostic clinics in the institutions and facilities under their jurisdiction as such commissioners may deem necessary within the amount appropriated therefor. The persons conducting the work of such clinics shall determine the physical and mental condition of all incarcerated individuals serving an indeterminate term, having a minimum of one day and a maximum of natural life, and of such other incarcerated individuals whose criminal record, behavior or other factors indicate to those in charge of such clinics the need of study and treatment. The work of the clinics shall include scientific study and psychiatric evaluation of each such incarcerated individual, including his or her career and life history, investigation of the cause of the crime and recommendations for the care, training and employment of such incarcerated individuals with a view to their reformation and to the protection of society. Each of the different phases of the work of the clinics shall be so coordinated with all the other phases of clinic work as to be a part of a unified and comprehensive scheme in the study and treatment of such incarcerated individuals. After classification in the clinics the incarcerated individual sentenced to state prison shall be certified to the warden and recommendation made to the commissioner of corrections and community supervision as to their disposition.

§ 149. Released incarcerated individuals; notification to sheriff, police, and district attorney. In the case of any incarcerated individual convicted of a felony, it shall be the duty of the department at least forty-eight hours prior to the release of any such incarcerated individual from a correctional facility to notify the chief of police both of the city, town or village in which such incarcerated individual proposes to reside and of the city, town or village in which such incarcerated individual resided at the time of his or her conviction and the district attorney of the county where the offense for which the incarcerated individual is incarcerated was prosecuted, of the contemplated release of such incarcerated individual, informing such chief of police and the district attorney of the name and aliases of the incarcerated individual, the address at which he or she proposes to reside, the amount of time remaining to be served, if any, on the full term for which he or she was sentenced, and the nature of the crime for which he or she was sentenced, transmitting at the same time to the chief of police a copy of such incarcerated individual's fingerprints and photograph. Where such incarcerated individual proposes to reside outside of a city, such notification shall be sent to the sheriff of the county in which such incarcerated individual proposes to reside. Such notification may be provided by electronic transmission to those willing jurisdictions that have the capability of receiving electronic transmission notification. Any chief of police or sheriff who receives notification of a released incarcerated individual pursuant to this section may request and receive from the division of criminal justice services a report containing a summary of such incarcerated individual's criminal record.

ARTICLE SIX-A

WORK RELEASE PROGRAM IN NEW YORK CITY CORRECTIONAL INSTITUTIONS

§ 150. Definitions. As used in this article:

1. "City" means the City of New York.

2. "Commissioner" means the commissioner of correction of the city provided, however, that if there shall be established by law a correctional administration in the city, "commissioner" shall mean the correctional administrator of the City.

3. "Department" means the department of correction of the city provided, however, that if there shall be established by law a

correctional administration in the city, "department" shall mean such administration.

4. "Work release program" means a program in which the limits of place of confinement are extended for the purpose of seeking or engaging in employment or self-employment, attending an educational institution, participating in a training program, or obtaining medical treatment not otherwise available, caring for the prisoner's household and family or for some other compelling reason consistent with the public interest.

§ 151. Work Release Program. The department shall establish work release programs for prisoners sentenced to New York City correctional institutions. The commissioner may extend the limits of the place of confinement of a prisoner as to whom there is reasonable cause to believe he will honor his trust by authorizing him to participate in a work release program in the community on a voluntary basis while continuing as a prisoner of the institution or facility in which he is confined. An extension of limits shall be under such prescribed conditions and for such reasonable hours or reasonable periods of time as the commissioner deems necessary. Such extension of limits may be withdrawn at any time.

§ 152. Employment. The department shall endeavor to secure employment for a prisoner deemed eligible to participate in a work release program and assist him in contacting prospective employers. In carrying out this function, the department shall coordinate its efforts with other departments or agencies furnishing employment placement services.

§ 153. Conditions of Employment. 1. A prisoner shall be permitted to be employed only if:

(a) The rates of pay and other conditions of employment will not be less than those paid or provided for work of similar nature in the locality in which the work is to be performed.

(b) The commissioner finds, after consultation with representatives of local union central bodies or similar labor union organizations, that such employment will not result in the displacement of employed workers, impair existing contracts for services, or be applied, except where a prisoner is to be hired by an employer for whom he worked prior to his conviction, in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality.

2. The State Department of Labor shall exercise the same supervision over conditions of employment for prisoners participating in work release programs as such department does over conditions of employment for free persons.

3. In no event shall a prisoner be employed in an establishment which has a labor dispute.

§ 154. Disposition of Earnings. The earnings of a prisoner participating in a work release program, less any payroll deductions required or authorized by law, shall be deposited with the department in a trust fund account. Such earnings shall not be subject to attachment or garnishment in the hands of the department. The commissioner is authorized to provide for disbursements from the trust fund account for any or all of the following purposes:

1. Such costs incident to the prisoner's confinement as the commissioner deems appropriate and reasonable.

2. Such costs related to the prisoner's work release program as the commissioner deems appropriate and reasonable.

3. Support of the prisoner's dependents.

4. Payment of court fines, mandatory surcharge, sex offender registration fee, DNA databank fee, restitution or reparation, or forfeitures.

The balance of such earnings, if any, after disbursements for any of the foregoing purposes shall be paid to the prisoner upon termination of his imprisonment.

§ 156. Liability for a Prisoner on Work Release. No prisoner participating in a work release program or whose place of confinement is extended pursuant to this article shall be deemed an agent, employee or involuntary servant of the department or the city while employed or going to and from such employment or released from confinement pursuant to this article; provided, however, that where a prisoner is employed and paid by the city, his relationship to the city arising out of such employment shall be determined in the same manner as if he were a free person so employed.

§ 157. Rules and Regulations. The commissioner may make such rules and regulations as he shall deem necessary and appropriate to carry out the purposes of this article.

§ 158. Designation of Place of Confinement. The commissioner may designate as a place of confinement of a prisoner any available, suitable and appropriate correctional institution or facility whether maintained by the city, state or federal government and may at any time transfer a prisoner from one place of confinement to another. Where such designation or transfer is to either a state or federal correctional institution or facility, it shall be subject to the prior approval of the appropriate person or agency having jurisdiction and control over such facility and upon such terms and conditions as such person or agency deems appropriate.

§ 159. Eligibility for Other Programs. The participation of any prisoner in a work release program established pursuant to this article shall in no way prejudice his eligibility for conditional release, parole or discretionary reduction of sentence.

§ 160. Annual Report of Commissioner. The commissioner shall annually prepare a report of the work release program which shall be transmitted to the legislature on or before the first day of March in each year. Such annual report shall include a summary of the operations and activities of the program for the preceding year and such recommendations for the improvement of the program as the commissioner shall deem necessary and proper.

ARTICLE 6-C

SEX OFFENDER REGISTRATION ACT

§ 168. Short title. This article shall be known and may be cited as the "Sex Offender Registration Act".

§ 168-a. Definitions. As used in this article, the following definitions apply:

1. "Sex offender" includes any person who is convicted of any of the offenses set forth in subdivision two or three of this section. Convictions that result from or are connected with the same act, or result from offenses committed at the same time, shall be counted for the purpose of this article as one conviction. Any conviction set aside pursuant to law is not a conviction for purposes of this article.

2. "Sex offense" means: (a) (i) a conviction of or a conviction for an attempt to commit any of the provisions of sections 120.70, 130.20, 130.25, 130.30, former section 130.40, former section 130.45, sections 130.60, 230.34, 230.34-a, 250.50, 255.25, 255.26 and 255.27 or article two hundred sixty-three of the penal law, or section 135.05, 135.10, 135.20 or 135.25 of such law relating to kidnapping offenses, provided the victim of such kidnapping or related offense is less than seventeen years old and the offender is not the parent of the victim, or section 230.04, where the person patronized is in fact less than seventeen years of age, 230.05, 230.06, 230.11, 230.12, 230.13, subdivision two of section 230.30, section 230.32, 230.33, or 230.34 of the penal law, or section 230.25 of the penal law where the person prostituted is in fact less than seventeen years old, or (ii) a conviction of or a conviction for an attempt to commit any of the provisions of section 235.22 of the penal law, or (iii) a conviction of or a conviction for an attempt to commit any provisions of the foregoing sections committed or attempted as a hate crime defined in section 485.05 of the penal law or as a crime of terrorism defined in section 490.25 of such law or as a sexually motivated felony defined in section 130.91 of such law; or

(b) a conviction of or a conviction for an attempt to commit any of the provisions of section 130.52 or 130.55 of the penal law, provided the victim of such offense is less than eighteen years of age; or

(c) a conviction of or a conviction for an attempt to commit any of the provisions of section 130.52 or 130.55 of the penal law regardless of the age of the victim and the offender has previously been convicted of: (i) a sex offense defined in this article, (ii) a sexually violent offense defined in this article, or (iii) any of the provisions of section 130.52 or 130.55 of the penal law, or an attempt thereof; or

(d) a conviction of (i) an offense in any other jurisdiction which includes all of the essential elements of any such crime provided for in paragraph (a), (b) or (c) of this subdivision or (ii) a felony in any other jurisdiction for which the offender is required to register as a sex offender in the jurisdiction in which the conviction occurred or, (iii) any of the provisions of 18 U.S.C. 2251, 18 U.S.C. 2251A, 18 U.S.C. 2252, 18 U.S.C. 2252A, 18 U.S.C. 2260, 18 U.S.C. 2422(b), 18 U.S.C. 2423, or 18 U.S.C. 2425, provided that the elements of such crime of conviction are substantially the same as those which are a part of such offense as of the date on which this subparagraph takes effect.

(e) a conviction of or a conviction for an attempt to commit any of the provisions of subdivision two, three or four of section 250.45 of the penal law, unless upon motion by the defendant, the trial court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that registration would be unduly harsh and inappropriate.

3. "Sexually violent offense" means: (a) (i) a conviction of or a conviction for an attempt to commit any of the provisions of section 130.35, former section 130.50, sections 130.65, 130.66, 130.67, 130.70, 130.75, 130.80, 130.95 and 130.96 of the penal law, or (ii) a conviction of or a conviction for an attempt to commit any of the provisions of sections 130.53, 130.65-a and 130.90 of the penal law, or (iii) a conviction of or a conviction for an attempt to commit any provisions of the foregoing sections committed or attempted as a hate crime defined in section 485.05 of the penal law or as a crime of terrorism defined in section 490.25 of such law; or

(b) a conviction of an offense in any other jurisdiction which includes all of the essential elements of any such felony provided for in paragraph (a) of this subdivision or conviction of a felony in any other jurisdiction for which the offender is required to register as a sex offender in the jurisdiction in which the conviction occurred.

4. "Law enforcement agency having jurisdiction" means: (a) (i) the chief law enforcement officer in the village, town or city in which the offender expects to reside upon his or her discharge, probation, parole, release to post-release supervision or upon any form of state or local conditional release; or (ii) if there be no chief law enforcement officer in such village, town or city, the chief law enforcement officer of the county in which the offender expects to reside; or (iii) if there be no chief enforcement officer in such village, town, city or county, the division of state police and (b) in the case of a sex offender who is or expects to be employed by, enrolled in, attending or employed, whether for compensation or not, at an institution of higher education, (i) the chief law enforcement officer in the village, town or city in which such institution is located; or (ii) if there be no chief law enforcement officer in such village, town or city, the chief law enforcement officer of the county in which such institution is located; or (iii) if there be no chief law enforcement officer in such village, town, city or county, the division of state police; and (iv) if such institution operates or employs a campus law enforcement or security agency, the chief of such agency and (c) in the case of a sex offender who expects to reside within a state park or on other land under the jurisdiction of the office of parks, recreation and historic preservation, the state regional park police.

5. "Division" means the division of criminal justice services as defined by section eight hundred thirty-seven of the executive law.

6. "Hospital" means: (a) a hospital as defined in subdivision two of section four hundred of this chapter and applies to persons committed to such hospital by order of commitment made pursuant to article sixteen of this chapter; or (b) a secure treatment facility as defined in section 10.03 of the mental hygiene law and applies to persons committed to such facility by an order made pursuant to article ten of the mental hygiene

law.

7. (a) "Sexual predator" means a sex offender who has been convicted of a sexually violent offense defined in subdivision three of this section and who suffers from a mental abnormality or personality disorder that makes him or her likely to engage in predatory sexually violent offenses.

(b) "Sexually violent offender" means a sex offender who has been convicted of a sexually violent offense defined in subdivision three of this section.

(c) "Predicate sex offender" means a sex offender who has been convicted of an offense set forth in subdivision two or three of this section when the offender has been previously convicted of an offense set forth in subdivision two or three of this section.

8. "Mental abnormality" means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

9. "Predatory" means an act directed at a stranger, or a person with whom a relationship has been established or promoted for the primary purpose of victimization.

10. "Board" means the "board of examiners of sex offenders" established pursuant to section one hundred sixty-eight-l of this article.

11. "Local correctional facility" means a local correctional facility as that term is defined in subdivision sixteen of section two of this chapter.

12. Probation means a sentence of probation imposed pursuant to article sixty-five of the penal law and shall include a sentence of imprisonment imposed in conjunction with a sentence of probation.

13. "Institution of higher education" means an institution in the state providing higher education as such term is defined in subdivision eight of section two of the education law.

14. "Nonresident worker" means any person required to register as a sex offender in another jurisdiction who is employed or carries on a vocation in this state, on either a full-time or a part-time basis, with or without compensation, for more than fourteen consecutive days, or for an aggregate period exceeding thirty days in a calendar year.

15. "Nonresident student" means a person required to register as a sex offender in another jurisdiction who is enrolled on a full-time or part-time basis in any public or private educational institution in this state including any secondary school, trade or professional institution or institution of higher education.

16. "Authorized internet entity" means any business, organization or other entity providing or offering a service over the internet which permits persons under eighteen years of age to access, meet, congregate or communicate with other users for the purpose of social networking. This definition shall not include general e-mail services.

17. "Internet access provider" means any business, organization or other entity engaged in the business of providing a computer and communications facility through which a customer may obtain access to the internet, but does not include a business, organization or other entity to the extent that it provides only telecommunications services.

18. "Internet identifiers" means electronic mail addresses and designations used for the purposes of chat, instant messaging, social networking or other similar internet communication.

§ 168-b. Duties of the division; registration information. 1. The division shall establish and maintain a file of individuals required to register pursuant to the provisions of this article which shall include the following information of each registrant:

(a) The sex offender's name, all aliases used, date of birth, sex, race, height, weight, eye color, driver's license number, home address and/or expected place of domicile, any internet accounts with internet access providers belonging to such offender and internet identifiers that such offender uses.

(b) A photograph and set of fingerprints. For a sex offender given a level three designation, the division shall, during the period of registration, update such photograph once each year. For a sex offender given a level one or level two designation, the division shall, during the period of registration, update such photograph once every three years. The division shall notify the sex offender by mail of the duty to appear and be photographed at the specified law enforcement agency having jurisdiction. Such notification shall be mailed at least thirty days and not more than sixty days before the photograph is required to be taken pursuant to subdivision two of section one hundred sixty-eight-f of this article.

(c) A description of the offense for which the sex offender was convicted, the date of conviction and the sentence imposed including the type of assigned supervision and the length of time of such supervision.

(d) The name and address of any institution of higher education at which the sex offender is or expects to be enrolled, attending or employed, whether for compensation or not, and whether such offender resides in or will reside in a facility owned or operated by such institution.

(e) If the sex offender has been given a level two or three designation, such offender's employment address and/or expected place of employment.

(f) Any other information deemed pertinent by the division.

2. a. The division is authorized to make the registry available to any regional or national registry of sex offenders for the purpose of sharing information. The division shall accept files from any regional or national registry of sex offenders and shall make such files available when requested pursuant to the provisions of this article.

b. The division shall also make registry information available to: (i) the department of health, to enable such department to identify persons ineligible to receive reimbursement or coverage for drugs, procedures or supplies pursuant to subdivision seven of section twenty-five hundred ten of the public health law, paragraph (e) of subdivision four of section three hundred sixty-five-a of the social services law, paragraph (e-1) of subdivision one of section three hundred sixty-nine-ee of the social services law, and subdivision one of section two hundred forty-one of the elder law; (ii) the department of financial services to enable such department to identify persons ineligible to receive reimbursement or coverage for drugs, procedures or supplies pursuant to subsection (b-1) of section four thousand three hundred twenty-two and subsection (d-1) of section four thousand three hundred twenty-six of the insurance law; and (iii) a court, to enable the court to promptly comply with the provisions of paragraph (a-1) of subdivision one of section two hundred forty of the domestic relations law, subdivision (e) of section six hundred fifty-one of the family court act, and subdivision (g) of section 81.19 of the mental hygiene law.

c. The department of health and the department of financial services may disclose to plans providing coverage for drugs, procedures or supplies for the treatment of erectile dysfunction pursuant to section three hundred sixty-nine-ee of the social services law or sections four thousand three hundred twenty-one, four thousand three hundred twenty-two or four thousand three hundred twenty-six of the insurance law registry information that is limited to the names, dates of birth, and social security numbers of persons who are ineligible by law to receive payment or reimbursement for specified drugs, procedures and supplies pursuant to such provisions of law. Every such plan shall identify to the department of health or the department of financial services, in advance of disclosure, each person in its employ who is authorized to receive such information provided, however, that such information may be disclosed by such authorized employee or employees to other personnel who are directly involved in approving or disapproving reimbursement or coverage for such drugs, procedures and supplies for such plan members, and provided further that no person receiving registry information shall redisclose such information except to other personnel who are directly involved in approving or disapproving reimbursement or coverage for such drugs, procedures and supplies.

d. No official, agency, authorized person or entity, whether public or private, shall be subject to any civil or criminal liability for damages for any decision or action made in the ordinary course of business of that official, agency, authorized person or entity pursuant to paragraphs b and c of this subdivision, provided that such official, agency, authorized person or entity acted reasonably and in good faith with respect to such registry information.

e. The division shall require that no information included in the registry shall be made available except in the furtherance of the provisions of this article.

3. The division shall develop a standardized registration form to be made available to the appropriate authorities and promulgate rules and regulations to implement the provisions of this section. Such form shall be written in clear and concise language and shall advise the sex offender of his or her duties and obligations under this article.

4. The division shall mail a nonforwardable verification form to the last reported address of the person for annual verification requirements.

5. The division shall also establish and operate a telephone number as provided for in section one hundred sixty-eight-p of this article.

6. The division shall also establish a subdirectory pursuant to section one hundred sixty-eight-q of this article.

7. The division shall also establish a public awareness campaign to advise the public of the provisions of this article.

8. The division shall charge a fee of ten dollars each time a sex offender registers any change of address or any change of his or her status of enrollment, attendance, employment or residence at any institution of higher education as required by subdivision four of section one hundred sixty-eight-f of this article. The fee shall be paid

to the division by the sex offender. The state comptroller is hereby authorized to deposit such fees into the general fund.

9. The division shall, upon the request of any children's camp operator, release to such person any information in the registry relating to a prospective employee of any such person or entity in accordance with the provisions of this article. The division shall promulgate rules and regulations relating to procedures for the release of information in the registry to such persons.

10. The division shall, upon the request of any authorized internet entity, release to such entity internet identifiers that would enable such entity to prescreen or remove sex offenders from its services or, in conformity with state and federal law, advise law enforcement and/or other governmental entities of potential violations of law and/or threats to public safety. Before releasing any information the division shall require an authorized internet entity that requests information from the registry to submit to the division the name, address and telephone number of such entity and the specific legal nature and corporate status of such entity. Except for the purposes specified in this subdivision, an authorized internet entity shall not publish or in any way disclose or redisclose any information provided to it by the division pursuant to this subdivision. The division may charge an authorized internet entity a fee for access to registered internet identifiers requested by such entity pursuant to this subdivision. The division shall promulgate rules and regulations relating to procedures for the release of information in the registry, including but not limited to, the disclosure and redisclosure of such information, and the imposition of any fees.

11. The division shall promptly notify each sex offender whose term of registration and verification would otherwise have expired prior to March thirty-first, two thousand seven of the continuing duty to register and verify under this article.

12. The division shall make registry information regarding level two and three sex offenders available to municipal housing authorities, as

established pursuant to article three of the public housing law, to enable such authorities to identify persons ineligible to reside in public housing. The division shall, at least monthly, release to each municipal housing authority information about level two and three sex offenders with a home address and/or expected place of domicile within the corresponding municipality. The division may promulgate rules and regulations relating to procedures for the release of information in the registry to such authorities.

§ 168-c. Sex offender; relocation; notification. 1. In the case of any sex offender, it shall be the duty of the department, hospital or local correctional facility at least ten calendar days prior to the release or discharge of any sex offender from a correctional facility, hospital or local correctional facility to notify the division of the contemplated release or discharge of such sex offender, informing the division in writing on a form provided by the division indicating the address at which he or she proposes to reside and the name and address of any institution of higher education at which he or she expects to be enrolled, attending or employed, whether for compensation or not, and whether he or she resides in or will reside in a facility owned or operated by such institution. If such sex offender changes his or her place of residence while on parole, such notification of the change of residence shall be sent by the sex offender's parole officer within forty-eight hours to the division on a form provided by the division. If such sex offender changes the status of his or her enrollment, attendance, employment or residence at any institution of higher education while on parole, such notification of the change of status shall be sent by the sex offender's parole officer within forty-eight hours to the division on a form provided by the division.

2. In the case of any sex offender on probation, it shall be the duty of the sex offender's probation officer to notify the division within forty-eight hours of the new place of residence on a form provided by the division. If such sex offender changes the status of his or her enrollment, attendance, employment or residence at any institution of higher education while on probation, such notification of the change of

status shall be sent by the sex offender's probation officer within forty-eight hours to the division on a form provided by the division.

3. In the case in which any sex offender escapes from a state or local correctional facility or hospital, the designated official of the facility or hospital where the person was confined shall notify within twenty-four hours the law enforcement agency having had jurisdiction at the time of his or her conviction, informing such law enforcement agency of the name and aliases of the person, and the address at which he or she resided at the time of his or her conviction, the amount of time remaining to be served, if any, on the full term for which he or she was sentenced, and the nature of the crime for which he or she was sentenced, transmitting at the same time a copy of such sex offender's fingerprints and photograph and a summary of his or her criminal record.

4. The division shall provide general information, in registration materials and annual correspondence, to registrants concerning notification and registration procedures that may apply if the registrant is authorized to relocate and relocates to another state or United States possession, or commences employment or attendance at an education institution in another state or United States possession. Such information shall include addresses and telephone numbers for relevant agencies from which additional information may be obtained.

§ 168-d. Duties of the court. 1. (a) Except as provided in paragraphs (b) and (c) of this subdivision, upon conviction of any of the offenses set forth in subdivision two or three of section one hundred sixty-eight-a of this article the court shall certify that the person is a sex offender and shall include the certification in the order of commitment, if any, and judgment of conviction, except as provided in paragraph (e) of subdivision two of section one hundred sixty-eight-a of this article. The court shall also advise the sex offender of his or her duties under this article. Failure to include the certification in the order of commitment or the judgment of conviction shall not relieve a sex offender of the obligations imposed by this article.

(b) Where a defendant stands convicted of an offense defined in paragraph (b) of subdivision two of section one hundred sixty-eight-a of this article or where the defendant was convicted of patronizing a person for prostitution in the third degree under section 230.04 of the penal law and the defendant controverts an allegation that the victim of such offense was less than eighteen years of age or, in the case of a conviction under section 230.04 of the penal law, less than seventeen years of age, the court, without a jury, shall, prior to sentencing, conduct a hearing, and the people may prove by clear and convincing evidence that the victim was less than eighteen years old or less than seventeen years old, as applicable, by any evidence admissible under the rules applicable to a trial of the issue of guilt. The court in addition to such admissible evidence may also consider reliable hearsay evidence submitted by either party provided that it is relevant to the determination of the age of the victim. Facts concerning the age of the victim proven at trial or ascertained at the time of entry of a plea of guilty shall be deemed established by clear and convincing evidence and shall not be relitigated. At the conclusion of the hearing, or if the defendant does not controvert an allegation that the victim of the offense was less than eighteen years old or less than seventeen years old, as applicable, the court must make a finding and enter an order setting forth the age of the victim. If the court finds that the victim of such offense was under eighteen years old or under seventeen years old, as applicable, the court shall certify the defendant as a sex offender, the provisions of paragraph (a) of this subdivision shall apply and the defendant shall register with the division in accordance with the provisions of this article.

(c) Where a defendant stands convicted of an offense defined in paragraph (c) of subdivision two of section one hundred sixty-eight-a of this article and the defendant controverts an allegation that the defendant was previously convicted of a sex offense or a sexually violent offense defined in this article or has previously been convicted of or convicted for an attempt to commit any of the provisions of section 130.52 or 130.55 of the penal law, the court, without a jury, shall, prior to sentencing, conduct a hearing, and the people may prove by clear and convincing evidence that the defendant was previously convicted of a sex offense or a sexually violent offense defined in this article or has previously been convicted of or convicted for an attempt to commit any of the provisions of section 130.52 or 130.55 of the penal law, by any evidence admissible under the rules applicable to a trial of the issue of guilt. The court in addition to such admissible evidence may also consider reliable hearsay evidence submitted by either party provided that it is relevant to the determination of whether the defendant was previously convicted of a sex offense or a sexually violent offense defined in this article or has previously been convicted of or convicted for an attempt to commit any of the provisions of section 130.52 or 130.55 of the penal law. At the conclusion of the hearing, or if the defendant does not controvert an allegation that the defendant was previously convicted of a sex offense or a sexually violent offense defined in this article or has previously been convicted of or convicted for an attempt to commit any of the provisions of section 130.52 or 130.55 of the penal law, the court must make a finding and enter an order determining whether the defendant was previously convicted of a sex offense or a sexually violent offense defined in this article or has previously been convicted of or convicted for an attempt to commit any of the provisions of section 130.52 or 130.55 of the penal law. If the court finds that the defendant has such a previous conviction, the court shall certify the defendant as a sex offender, the provisions of paragraph (a) of this subdivision shall apply and the defendant shall register with the division in accordance with the provisions of this article.

2. Any sex offender, who is released on probation or discharged upon payment of a fine, conditional discharge or unconditional discharge shall, prior to such release or discharge, be informed of his or her duty to register under this article by the court in which he or she was convicted. At the time sentence is imposed, such sex offender shall register with the division on a form prepared by the division. The court shall require the sex offender to read and sign such form and to complete the registration portion of such form. The court shall on such form obtain the address where the sex offender expects to reside upon his or her release, and the name and address of any institution of higher education he or she expects to be employed by, enrolled in, attending or employed, whether for compensation or not, and whether he or she expects to reside in a facility owned or operated by such an

institution, and shall report such information to the division. The court shall give one copy of the form to the sex offender and shall send two copies to the division which shall forward the information to the law enforcement agencies having jurisdiction. The court shall also notify the district attorney and the sex offender of the date of the determination proceeding to be held pursuant to subdivision three of this section, which shall be held at least forty-five days after such notice is given. This notice shall include the following statement or a substantially similar statement: "This proceeding is being held to determine whether you will be classified as a level 3 offender (risk of repeat offense is high), a level 2 offender (risk of repeat offense is moderate), or a level 1 offender (risk of repeat offense is low), or whether you will be designated as a sexual predator, a sexually violent offender or a predicate sex offender, which will determine how long you must register as a sex offender and how much information can be provided to the public concerning your registration. If you fail to appear at this proceeding, without sufficient excuse, it shall be held in your absence. Failure to appear may result in a longer period of registration or a higher level of community notification because you are not present to offer evidence or contest evidence offered by the district attorney." The court shall also advise the sex offender that he or she has a right to a hearing prior to the court's determination, that he or she has the right to be represented by counsel at the hearing and that counsel will be appointed if he or she is financially unable to retain counsel. If the sex offender applies for assignment of counsel to represent him or her at the hearing and counsel was not previously assigned to represent the sex offender in the underlying criminal action, the court shall determine whether the offender is financially unable to retain counsel. If such a finding is made, the court shall assign counsel to represent the sex offender pursuant to article eighteen-B of the county law. Where the court orders a sex offender released on probation, such order must include a provision requiring that he or she comply with the requirements of this article. Where such sex offender violates such provision, probation may be immediately revoked in the manner provided by article four hundred ten of the criminal procedure law.

3. For sex offenders released on probation or discharged upon payment

of a fine, conditional discharge or unconditional discharge, it shall be the duty of the court applying the guidelines established in subdivision five of section one hundred sixty-eight-l of this article to determine the level of notification pursuant to subdivision six of section one hundred sixty-eight-l of this article and whether such sex offender shall be designated a sexual predator, sexually violent offender, or predicate sex offender as defined in subdivision seven of section one hundred sixty-eight-a of this article. At least fifteen days prior to the determination proceeding, the district attorney shall provide to the court and the sex offender a written statement setting forth the determinations sought by the district attorney together with the reasons for seeking such determinations. The court shall allow the sex offender to appear and be heard. The state shall appear by the district attorney, or his or her designee, who shall bear the burden of proving the facts supporting the determinations sought by clear and convincing evidence. Where there is a dispute between the parties concerning the determinations, the court shall adjourn the hearing as necessary to permit the sex offender or the district attorney to obtain materials relevant to the determinations from any state or local facility, hospital, institution, office, agency, department or division. Such materials may be obtained by subpoena if not voluntarily provided to the requesting party. In making the determinations, the court shall review any victim's statement and any relevant materials and evidence submitted by the sex offender and the district attorney and the court may consider reliable hearsay evidence submitted by either party provided that it is relevant to the determinations. Facts previously proven at trial or elicited at the time of entry of a plea of guilty shall be deemed established by clear and convincing evidence and shall not be relitigated. The court shall render an order setting forth its determinations and the findings of fact and conclusions of law on which the determinations are based. A copy of the order shall be submitted by the court to the division. Upon application of either party, the court shall seal any portion of the court file or record which contains material that is confidential under any state or federal statute. Either party may appeal as of right from the order pursuant to the provisions of articles fifty-five, fifty-six and fifty-seven of the civil practice law and rules. Where counsel has been assigned to represent the sex offender upon the ground that the sex offender is financially unable to retain counsel, that assignment shall be continued throughout the pendency of the appeal, and the person may appeal as a poor person pursuant to article eighteen-B of the county law.

4. If a sex offender, having been given notice, including the time and place of the determination proceeding in accordance with this section, fails to appear at this proceeding, without sufficient excuse, the court shall conduct the hearing and make the determinations in the manner set forth in subdivision three of this section.

§ 168-e. Discharge of sex offender from correctional facility; duties of official in charge. 1. Any sex offender, to be discharged, paroled, released to post-release supervision or released from any state or local correctional facility, hospital or institution where he or she was confined or committed, shall at least fifteen calendar days prior to discharge, parole or release, be informed of his or her duty to register under this article, by the facility in which he or she was confined or committed. The facility shall require the sex offender to read and sign such form as may be required by the division stating the duty to register and the procedure for registration has been explained to him or her and to complete the registration portion of such form. The facility shall obtain on such form the address where the sex offender expects to reside upon his or her discharge, parole or release and the name and address of any institution of higher education he or she expects to be employed by, enrolled in, attending or employed, whether for compensation or not, and whether he or she expects to reside in a facility owned or operated by such an institution, and shall report such information to the division. The facility shall give one copy of the form to the sex offender, retain one copy and shall send one copy to the division which shall provide the information to the law enforcement agencies having jurisdiction. The facility shall give the sex offender a form prepared by the division, to register with the division at least fifteen calendar days prior to release and such form shall be completed, signed by the sex offender and sent to the division by the facility at least ten days prior to the sex offender's release or discharge.

2. The division shall also immediately transmit the conviction data and fingerprints to the Federal Bureau of Investigation if not already obtained.

§ 168-f. Duty to register and to verify. 1. Any sex offender shall, (a) at least ten calendar days prior to discharge, parole, release to post-release supervision or release from any state or local correctional facility, hospital or institution where he or she was confined or committed, or, (b) at the time sentence is imposed for any sex offender released on probation or discharged upon payment of a fine, conditional discharge or unconditional discharge, register with the division on a form prepared by the division.

2. For a sex offender required to register under this article on each anniversary of the sex offender's initial registration date during the period in which he is required to register under this section the following applies:

(a) The sex offender shall mail the verification form to the division within ten calendar days after receipt of the form.

(b) The verification form shall be signed by the sex offender, and state that he still resides at the address last reported to the division.

(b-1) If the sex offender has been given a level two or three designation, such offender shall sign the verification form, and state that he or she still is employed at the address last reported to the division.

(b-2) If the sex offender has been given a level three designation, he or she shall personally appear at the law enforcement agency having jurisdiction within twenty days of the first anniversary of the sex offender's initial registration and every year thereafter during the period of registration for the purpose of providing a current photograph of such offender. The law enforcement agency having jurisdiction shall photograph the sex offender and shall promptly forward a copy of such photograph to the division. For purposes of this paragraph, if such sex offender is confined in a state or local correctional facility, the local law enforcement agency having jurisdiction shall be the warden, superintendent, sheriff or other person in charge of the state or local correctional facility.

(b-3) If the sex offender has been given a level one or level two designation, he or she shall personally appear at the law enforcement agency having jurisdiction within twenty days of the third anniversary of the sex offender's initial registration and every three years thereafter during the period of registration for the purpose of providing a current photograph of such offender. The law enforcement agency having jurisdiction shall photograph the sex offender and shall promptly forward a copy of such photograph to the division. For purposes of this paragraph, if such sex offender is confined in a state or local correctional facility, the local law enforcement agency having jurisdiction shall be the warden, superintendent, sheriff or other person in charge of the state or local correctional facility.

(c) If the sex offender fails to mail the signed verification form to the division within ten calendar days after receipt of the form, he or she shall be in violation of this section unless he proves that he or she has not changed his or her residence address.

(c-1) If the sex offender, to whom a notice has been mailed at the last reported address pursuant to paragraph b of subdivision one of section one hundred sixty-eight-b of this article, fails to personally appear at the law enforcement agency having jurisdiction, as provided in paragraph (b-2) or (b-3) of this subdivision, within twenty days of the anniversary of the sex offender's initial registration, or an alternate later date scheduled by the law enforcement agency having jurisdiction, he or she shall be in violation of this section. The duty to personally appear for such updated photograph shall be temporarily suspended during any period in which the sex offender is confined in any hospital or institution, and such sex offender shall personally appear for such updated photograph no later than ninety days after release from such hospital or institution, or an alternate later date scheduled by the law enforcement agency having jurisdiction.

3. The provisions of subdivision two of this section shall be applied to a sex offender required to register under this article except that such sex offender designated as a sexual predator or having been given a

level three designation must personally verify his or her address with the local law enforcement agency every ninety calendar days after the date of release or commencement of parole or post-release supervision, or probation, or release on payment of a fine, conditional discharge or unconditional discharge. At such time the law enforcement agency having jurisdiction may take a new photograph of such sex offender if it appears that the offender has had a change in appearance since the most recent photograph taken pursuant to paragraph (b-2) of subdivision two of this section. If such photograph is taken, the law enforcement agency shall promptly forward a copy of such photograph to the division. The duty to personally verify shall be temporarily suspended during any period in which the sex offender is confined to any state or local correctional facility, hospital or institution and shall immediately recommence on the date of the sex offender's release.

4. Any sex offender shall register with the division no later than ten calendar days after any change of address, internet accounts with internet access providers belonging to such offender, internet identifiers that such offender uses, or his or her status of enrollment, attendance, employment or residence at any institution of higher education. A fee of ten dollars, as authorized by subdivision eight of section one hundred sixty-eight-b of this article, shall be submitted by the sex offender each time such offender registers any change of address or any change of his or her status of enrollment, attendance, employment or residence at any institution of higher education. Any failure or omission to submit the required fee shall not affect the acceptance by the division of the change of address or change of status.

5. The duty to register under the provisions of this article shall not be applicable to any sex offender whose conviction was reversed upon appeal or who was pardoned by the governor.

6. Any nonresident worker or nonresident student, as defined in subdivisions fourteen and fifteen of section one hundred sixty-eight-a of this article, shall register his or her current address and the address of his or her place of employment or educational institution attended with the division within ten calendar days after such

nonresident worker or nonresident student commences employment or attendance at an educational institution in the state. Any nonresident worker or nonresident student shall notify the division of any change of residence, employment or educational institution address no later than ten days after such change. The division shall notify the law enforcement agency where the nonresident worker is employed or the educational institution is located that a nonresident worker or nonresident student is present in that agency's jurisdiction.

§ 168-g. Prior convictions; duty to inform and register. 1. The department or office of probation and correctional alternatives in accordance with risk factors pursuant to section one hundred sixty-eight-l of this article shall determine the duration of registration and notification for every sex offender who on the effective date of this article is then on community supervision or probation for an offense provided for in subdivision two or three of section one hundred sixty-eight-a of this article.

2. Every sex offender who on the effective date of this article is then on community supervision or probation for an offense provided for in subdivision two or three of section one hundred sixty-eight-a of this article shall within ten calendar days of such determination register with his parole or probation officer. On each anniversary of the sex offender's initial registration date thereafter, the provisions of section one hundred sixty-eight-f of this article shall apply. Any sex offender who fails or refuses to so comply shall be subject to the same penalties as otherwise provided for in this article which would be imposed upon a sex offender who fails or refuses to so comply with the provisions of this article on or after such effective date.

3. It shall be the duty of the parole or probation officer to inform and register such sex offender according to the requirements imposed by this article. A parole or probation officer shall give one copy of the form to the sex offender and shall, within three calendar days, send two copies electronically or otherwise to the department which shall forward one copy electronically or otherwise to the law enforcement agency

having jurisdiction where the sex offender resides upon his or her community supervision, probation, or local conditional release.

4. A petition for relief from this section is permitted to any sex offender required to register while released to community supervision or probation pursuant to section one hundred sixty-eight-o of this article.

§ 168-h. Duration of registration and verification. 1. The duration of registration and verification for a sex offender who has not been designated a sexual predator, or a sexually violent offender, or a predicate sex offender, and who is classified as a level one risk, or who has not yet received a risk level classification, shall be annually for a period of twenty years from the initial date of registration.

2. The duration of registration and verification for a sex offender who, on or after March eleventh, two thousand two, is designated a sexual predator, or a sexually violent offender, or a predicate sex offender, or who is classified as a level two or level three risk, shall be annually for life. Notwithstanding the foregoing, a sex offender who is classified as a level two risk and who is not designated a sexual predator, a sexually violent offender or a predicate sex offender, may be relieved of the duty to register and verify as provided by subdivision one of section one hundred sixty-eight-o of this article.

3. Any sex offender having been designated a level three risk or a sexual predator shall also personally verify his or her address every ninety calendar days with the local law enforcement agency having jurisdiction where the offender resides.

§ 168-i. Registration and verification requirements. Registration and verification as required by this article shall consist of a statement in writing signed by the sex offender giving the information that is required by the division and the division shall enter the information into an appropriate electronic data base or file.

§ 168-j. Notification of local law enforcement agencies of change of address. 1. Upon receipt of a change of address by a sex offender required to register under this article, but in any event no more than two business days after such receipt, the division shall notify the local law enforcement agency having jurisdiction of the new place of residence and the local law enforcement agency where the sex offender last resided of the new place of residence.

2. Upon receipt of change of address information, the local law enforcement agency having jurisdiction of the new place of residence shall adhere to the notification provisions set forth in subdivision six of section one hundred sixty-eight-l of this article.

3. The division shall, if the sex offender changes residence to another state, notify the appropriate agency within that state of the new place of residence.

4. Upon receipt of a change in the status of the enrollment, attendance, employment or residence at an institution of higher education by a sex offender required to register under this article, but in any event no more than two business days after such receipt, the division shall notify each law enforcement agency having jurisdiction which is affected by such change.

5. Upon receipt of change in the status of the enrollment, attendance, employment or residence at an institution of higher education by a sex offender required to register under this article, each law enforcement agency having jurisdiction shall adhere to the notification provisions set forth in subdivision six of section one hundred sixty-eight-l of this article.

§ 168-k. Registration for change of address from another state. 1. A sex offender who has been convicted of an offense which requires registration under paragraph (d) of subdivision two or paragraph (b) of subdivision three of section one hundred sixty-eight-a of this article shall notify the division of the new address no later than ten calendar days after such sex offender establishes residence in this state.

2. The division shall advise the board that the sex offender has established residence in this state. The board shall determine whether the sex offender is required to register with the division. If it is determined that the sex offender is required to register, the division shall notify the sex offender of his or her duty to register under this article and shall require the sex offender to sign a form as may be required by the division acknowledging that the duty to register and the procedure for registration has been explained to the sex offender. The division shall obtain on such form the address where the sex offender expects to reside within the state and the sex offender shall retain one copy of the form and send two copies to the division which shall provide the information to the law enforcement agency having jurisdiction where the sex offender expects to reside within this state. No later than thirty days prior to the board making a recommendation, the sex offender shall be notified that his or her case is under review and that he or she is permitted to submit to the board any information relevant to the review. After reviewing any information obtained, and applying the guidelines established in subdivision five of section one hundred sixty-eight-l of this article, the board shall within sixty calendar days make a recommendation regarding the level of notification pursuant to subdivision six of section one hundred sixty-eight-l of this article and whether such sex offender shall be designated a sexual predator, sexually violent offender, or predicate sex offender as defined in subdivision seven of section one hundred sixty-eight-a of this article. This recommendation shall be confidential and shall not be available for public inspection. It shall be submitted by the board to the county court or supreme court and to the district attorney in the county of residence of the sex offender and to the sex offender. It shall be the duty of the county court or supreme court in the county of residence of the sex offender, applying the guidelines established in subdivision five of section one hundred sixty-eight-l of this article, to determine the level of notification pursuant to subdivision six of section one hundred sixty-eight-l of this article and whether such sex offender shall be designated a sexual predator, sexually violent offender, or

predicate sex offender as defined in subdivision seven of section one hundred sixty-eight-a of this article. At least thirty days prior to the determination proceeding, such court shall notify the district attorney and the sex offender, in writing, of the date of the determination proceeding and the court shall also provide the district attorney and sex offender with a copy of the recommendation received from the board and any statement of the reasons for the recommendation received from the board. This notice shall include the following statement or a substantially similar statement: "This proceeding is being held to determine whether you will be classified as a level 3 offender (risk of repeat offense is high), a level 2 offender (risk of repeat offense is moderate), or a level 1 offender (risk of repeat offense is low), or whether you will be designated as a sexual predator, a sexually violent offender or a predicate sex offender, which will determine how long you must register as a sex offender and how much information can be provided to the public concerning your registration. If you fail to appear at this proceeding, without sufficient excuse, it shall be held in your absence. Failure to appear may result in a longer period of registration or a higher level of community notification because you are not present to offer evidence or contest evidence offered by the district attorney." The court shall also advise the sex offender that he or she has a right to a hearing prior to the court's determination, that he or she has the right to be represented by counsel at the hearing and that counsel will be appointed if he or she is financially unable to retain counsel. A returnable form shall be enclosed in the court's notice to the sex offender on which the sex offender may apply for assignment of counsel. If the sex offender applies for assignment of counsel and the court finds that the offender is financially unable to retain counsel, the court shall assign counsel to represent the sex offender pursuant to article eighteen-B of the county law. If the district attorney seeks a determination that differs from the recommendation submitted by the board, at least ten days prior to the determination proceeding the district attorney shall provide to the court and the sex offender a statement setting forth the determinations sought by the district attorney together with the reasons for seeking such determinations. The court shall allow the sex offender to appear and be heard. The state shall appear by the district attorney, or his or her designee, who shall bear the burden of proving the facts supporting the determinations sought by clear and convincing evidence. It shall be the duty of the court applying the guidelines established in subdivision five of section one hundred sixty-eight-l of this article to determine the level of notification pursuant to subdivision six of section one hundred sixty-eight-l of this article and whether such sex offender shall be designated a sexual predator, sexually violent offender, or predicate sex offender as defined in subdivision seven of section one hundred sixty-eight-a of this article. Where there is a dispute between the parties concerning the determinations, the court shall adjourn the hearing as necessary to permit the sex offender or the district attorney to obtain materials relevant to the determinations from the state board of examiners of sex offenders or any state or local facility, hospital, institution, office, agency, department or division. Such materials may be obtained by subpoena if not voluntarily provided to the requesting party. In making the determinations the court shall review any victim's statement and any relevant materials and evidence submitted by the sex offender and the district attorney and the recommendation and any material submitted by the board, and may consider reliable hearsay evidence submitted by either party, provided that it is relevant to the determinations. If available, facts proven at trial or elicited at the time of a plea of guilty shall be deemed established by clear and convincing evidence and shall not be relitigated. The court shall render an order setting forth its determinations and the findings of fact and conclusions of law on which the determinations are based. A copy of the order shall be submitted by the court to the division. Upon application of either party, the court shall seal any portion of the court file or record which contains material that is confidential under any state or federal statute. Either party may appeal as of right from the order pursuant to the provisions of articles fifty-five, fifty-six and fifty-seven of the civil practice law and rules. Where counsel has been assigned to represent the sex offender upon the ground that the sex offender is financially unable to retain counsel, that assignment shall be continued throughout the pendency of the appeal, and the person may appeal as a poor person pursuant to article eighteen-B of the county law.

3. The division shall undertake an information campaign designed to provide information to officials and appropriate individuals in other states and United States possessions concerning the notification procedures required by this article. Such information campaign shall be ongoing, and shall include, but not be limited to, letters, notice forms and similar materials providing relevant information about this article and the specific procedures required to effect notification. Such materials shall include an address and telephone number which such officials and individuals in other states and United States possessions may use to obtain additional information.

4. If a sex offender, having been given notice, including the time and place of the determination proceeding in accordance with this section, fails to appear at this proceeding, without sufficient excuse, the court shall conduct the hearing and make the determinations in the manner set forth in subdivision two of this section.

§ 168-l. Board of examiners of sex offenders. 1. There shall be a board of examiners of sex offenders which shall possess the powers and duties hereinafter specified. Such board shall consist of five members appointed by the governor. All members shall be employees of the department and shall be experts in the field of the behavior and treatment of sex offenders. The term of office of each member of such board shall be for six years; provided, however, that any member chosen to fill a vacancy occurring otherwise than by expiration of term shall be appointed for the remainder of the unexpired term of the member whom he or she is to succeed. In the event of the inability to act of any member, the governor may appoint some competent informed person to act in his or her stead during the continuance of such disability.

2. The governor shall designate one of the members of the board as chairman to serve in such capacity at the pleasure of the governor or until the member's term of office expires and a successor is designated in accordance with law, whichever first occurs.

3. Any member of the board may be removed by the governor for cause

after an opportunity to be heard.

4. Except as otherwise provided by law, a majority of the board shall constitute a quorum for the transaction of all business of the board.

5. The board shall develop guidelines and procedures to assess the risk of a repeat offense by such sex offender and the threat posed to the public safety. Such guidelines shall be based upon, but not limited to, the following:

(a) criminal history factors indicative of high risk of repeat offense, including:

(i) whether the sex offender has a mental abnormality or personality disorder that makes him or her likely to engage in predatory sexually violent offenses;

(ii) whether the sex offender's conduct was found to be characterized by repetitive and compulsive behavior, associated with drugs or alcohol;

(iii) whether the sex offender served the maximum term;

(iv) whether the sex offender committed the felony sex offense against a child;

(v) the age of the sex offender at the time of the commission of the first sex offense;

(b) other criminal history factors to be considered in determining risk, including:

(i) the relationship between such sex offender and the victim;

(ii) whether the offense involved the use of a weapon, violence or infliction of serious bodily injury;

(iii) the number, date and nature of prior offenses;

(c) conditions of release that minimize risk or re-offense, including but not limited to whether the sex offender is under supervision; receiving counseling, therapy or treatment; or residing in a home situation that provides guidance and supervision;

(d) physical conditions that minimize risk of re-offense, including but not limited to advanced age or debilitating illness;

(e) whether psychological or psychiatric profiles indicate a risk of recidivism;

(f) the sex offender's response to treatment;

(g) recent behavior, including behavior while confined;

(h) recent threats or gestures against persons or expressions of intent to commit additional offenses; and

(i) review of any victim impact statement.

6. Applying these guidelines, the board shall within sixty calendar days prior to the discharge, parole, release to post-release supervision or release of a sex offender make a recommendation which shall be confidential and shall not be available for public inspection, to the sentencing court as to whether such sex offender warrants the designation of sexual predator, sexually violent offender, or predicate sex offender as defined in subdivision seven of section one hundred sixty-eight-a of this article. In addition, the guidelines shall be applied by the board to make a recommendation to the sentencing court which shall be confidential and shall not be available for public inspection, providing for one of the following three levels of notification depending upon the degree of the risk of re-offense by the sex offender.

(a) If the risk of repeat offense is low, a level one designation shall be given to such sex offender. In such case the law enforcement agency or agencies having jurisdiction and the law enforcement agency or agencies having had jurisdiction at the time of his or her conviction shall be notified and may disseminate relevant information which may include a photograph and description of the offender and which may include the name of the sex offender, approximate address based on sex offender's zip code, background information including the offender's crime of conviction, modus of operation, type of victim targeted, the name and address of any institution of higher education at which the sex offender is enrolled, attends, is employed or resides and the description of special conditions imposed on the offender to any entity with vulnerable populations related to the nature of the offense committed by such sex offender. Any entity receiving information on a sex offender may disclose or further disseminate such information at its discretion.

(b) If the risk of repeat offense is moderate, a level two designation shall be given to such sex offender. In such case the law enforcement agency or agencies having jurisdiction and the law enforcement agency or agencies having had jurisdiction at the time of his or her conviction shall be notified and may disseminate relevant information which shall include a photograph and description of the offender and which may include the exact name and any aliases used by the sex offender, exact address, background information including the offender's crime of conviction, mode of operation, type of victim targeted, the name and address of any institution of higher education at which the sex offender is enrolled, attends, is employed or resides and the description of special conditions imposed on the offender to any entity with vulnerable populations related to the nature of the offense committed by such sex offender. Any entity receiving information on a sex offender may disclose or further disseminate such information at its discretion. In addition, in such case, the information described herein shall also be provided in the subdirectory established in this article and notwithstanding any other provision of law, such information shall, upon request, be made available to the public.

Such law enforcement agencies shall compile, maintain and update a listing of vulnerable organizational entities within its jurisdiction. Such listing shall be utilized for notification of such organizations in disseminating such information on level two sex offenders pursuant to this paragraph. Such listing shall include and not be limited to: superintendents of schools or chief school administrators, superintendents of parks, public and private libraries, public and private school bus transportation companies, day care centers, nursery schools, pre-schools, neighborhood watch groups, community centers, civic associations, nursing homes, victim's advocacy groups and places of worship.

(c) If the risk of repeat offense is high and there exists a threat to the public safety a level three designation shall be given to such sex offender. In such case, the law enforcement agency or agencies having jurisdiction and the law enforcement agency or agencies having had jurisdiction at the time of his or her conviction shall be notified and may disseminate relevant information which shall include a photograph and description of the offender and which may include the sex offender's exact name and any aliases used by the offender, exact address, address of the offender's place of employment, background information including the offender's crime of conviction, mode of operation, type of victim targeted, the name and address of any institution of higher education at which the sex offender is enrolled, attends, is employed or resides and the description of special conditions imposed on the offender to any entity with vulnerable populations related to the nature of the offense committed by such sex offender. Any entity receiving information on a sex offender may disclose or further disseminate such information at its discretion. In addition, in such case, the information described herein shall also be provided in the subdirectory established in this article and notwithstanding any other provision of law, such information shall, upon request, be made available to the public.

Such law enforcement agencies shall compile, maintain and update a listing of vulnerable organizational entities within its jurisdiction. Such listing shall be utilized for notification of such organizations in disseminating such information on level three sex offenders pursuant to this paragraph. Such listing shall include and not be limited to: superintendents of schools or chief school administrators, superintendents of parks, public and private libraries, public and private school bus transportation companies, day care centers, nursery schools, pre-schools, neighborhood watch groups, community centers, civic associations, nursing homes, victim's advocacy groups and places of worship.

7. Upon request by the court, pursuant to section one hundred sixty-eight-o of this article, the board shall provide an updated report pertaining to the sex offender petitioning for relief of the duty to register or for a modification of his or her level of notification.

8. A failure by a state or local agency or the board to act or by a court to render a determination within the time period specified in this article shall not affect the obligation of the sex offender to register or verify under this article nor shall such failure prevent a court from making a determination regarding the sex offender's level of notification and whether such offender is required by law to be registered for a period of twenty years or for life. Where a court is unable to make a determination prior to the date scheduled for a sex offender's discharge, parole, release to post-release supervision or

release, it shall adjourn the hearing until after the offender is discharged, paroled, released to post-release supervision or released, and shall then expeditiously complete the hearing and issue its determination.

§ 168-m. Review. Notwithstanding any other provision of law to the contrary, any state or local correctional facility, hospital or institution, district attorney, law enforcement agency, probation department, state board of parole, court or child protective agency shall forward relevant information pertaining to a sex offender to be discharged, paroled, released to post-release supervision or released to the board for review no later than one hundred twenty days prior to the release or discharge and the board shall make recommendations as provided in subdivision six of section one hundred sixty-eight-l of this article within sixty days of receipt of the information. Information may include, but may not be limited to all or a portion of the arrest file, prosecutor's file, probation or parole file, child protective file, court file, commitment file, medical file and treatment file pertaining to such person. Such person shall be permitted to submit to the board any information relevant to the review. Upon application of the sex offender or the district attorney, the court shall seal any portion of the board's file pertaining to the sex offender that contains material that is confidential under any state or federal law; provided, however, that in any subsequent proceedings in which the sex offender who is the subject of the sealed record is a party and which requires the board to provide a recommendation to the court pursuant to this article, such sealed record shall be available to the sex offender, the district attorney, the court and the attorney general where the attorney general is a party, or represents a party, in the proceeding.

§ 168-n. Judicial determination. 1. A determination that an offender is a sexual predator, sexually violent offender, or predicate sex offender as defined in subdivision seven of section one hundred sixty-eight-a of this article shall be made prior to the discharge, parole, release to post-release supervision or release of such offender by the sentencing court applying the guidelines established in subdivision five of section one hundred sixty-eight-l of this article after receiving a recommendation from the board pursuant to section one hundred sixty-eight-l of this article.

2. In addition, applying the guidelines established in subdivision five of section one hundred sixty-eight-l of this article, the sentencing court shall also make a determination with respect to the level of notification, after receiving a recommendation from the board pursuant to section one hundred sixty-eight-l of this article. Both determinations of the sentencing court shall be made thirty calendar days prior to discharge, parole or release.

3. No later than thirty days prior to the board's recommendation, the sex offender shall be notified that his or her case is under review and that he or she is permitted to submit to the board any information relevant to the review. Upon receipt of the board's recommendation, the sentencing court shall determine whether the sex offender was previously found to be eligible for assigned counsel in the underlying case. Where such a finding was previously made, the court shall assign counsel to represent the offender, pursuant to article eighteen-B of the county law. At least twenty days prior to the determination proceeding, the sentencing court shall notify the district attorney, the sex offender and the sex offender's counsel, in writing, of the date of the determination proceeding and shall also provide the district attorney, the sex offender and the sex offender's counsel with a copy of the recommendation received from the board and any statement of the reasons for the recommendation received from the board. This notice shall include the following statement or a substantially similar statement: "This proceeding is being held to determine whether you will be classified as a level 3 offender (risk of repeat offense is high), a level 2 offender (risk of repeat offense is moderate), or a level 1 offender (risk of repeat offense is low), or whether you will be designated as a sexual predator, a sexually violent offender or a predicate sex offender, which will determine how long you must register as a sex offender and how much information can be provided to the public concerning your registration. If you fail to appear at this proceeding,

without sufficient excuse, it shall be held in your absence. Failure to appear may result in a longer period of registration or a higher level of community notification because you are not present to offer evidence or contest evidence offered by the district attorney." The written notice to the sex offender shall also advise the offender that he or she has a right to a hearing prior to the court's determination, and that he or she has the right to be represented by counsel at the hearing. If counsel has been assigned to represent the offender at the determination proceeding, the notice shall also provide the name, address and telephone number of the assigned counsel. Where counsel has not been assigned, the notice shall advise the sex offender that counsel will be appointed if he or she is financially unable to retain counsel, and a returnable form shall be enclosed in the court's notice to the sex offender on which the sex offender may apply for assignment of counsel. If the sex offender applies for assignment of counsel and the court finds that the offender is financially unable to retain counsel, the court shall assign counsel to represent the sex offender pursuant to article eighteen-B of the county law. If the district attorney seeks a determination that differs from the recommendation submitted by the board, at least ten days prior to the determination proceeding the district attorney shall provide to the court and the sex offender a statement setting forth the determinations sought by the district attorney together with the reasons for seeking such determinations. The court shall allow the sex offender to appear and be heard. The state shall appear by the district attorney, or his or her designee, who shall bear the burden of proving the facts supporting the determinations sought by clear and convincing evidence. Where there is a dispute between the parties concerning the determinations, the court shall adjourn the hearing as necessary to permit the sex offender or the district attorney to obtain materials relevant to the determinations from the state board of examiners of sex offenders or any state or local facility, hospital, institution, office, agency, department or division. Such materials may be obtained by subpoena if not voluntarily provided to the requesting party. In making the determinations the court shall review any victim's statement and any relevant materials and evidence submitted by the sex offender and the district attorney and the recommendation and any materials submitted by the board, and may consider reliable hearsay evidence submitted by either party, provided that it is relevant to the determinations. Facts previously proven at trial or elicited at the time of entry of a plea of guilty shall be deemed established by clear and convincing evidence and shall not be relitigated. The court shall render an order setting forth its determinations and the findings of fact and conclusions of law on which the determinations are based. A copy of the order shall be submitted by the court to the division. Upon application of either party, the court shall seal any portion of the court file or record which contains material that is confidential under any state or federal statute. Either party may appeal as of right from the order pursuant to the provisions of articles fifty-five, fifty-six and fifty-seven of the civil practice law and rules. Where counsel has been assigned to represent the sex offender upon the ground that the sex offender is financially unable to retain counsel, that assignment shall be continued throughout the pendency of the appeal, and the person may appeal as a poor person pursuant to article eighteen-B of the county law.

4. Upon determination that the risk of repeat offense and threat to public safety is high, the sentencing court shall also notify the division of such fact for the purposes of section one hundred sixty-eight-q of this article.

5. Upon the reversal of a conviction of a sexual offense defined in paragraphs (a) and (b) of subdivision two or three of section one hundred sixty-eight-a of this article, the appellate court shall remand the case to the lower court for entry of an order directing the expungement of any records required to be kept herein.

6. If a sex offender, having been given notice, including the time and place of the determination proceeding in accordance with this section, fails to appear at this proceeding, without sufficient excuse, the court shall conduct the hearing and make the determinations in the manner set forth in subdivision three of this section.

§ 168-o. Petition for relief or modification. 1. Any sex offender who is classified as a level two risk, and who has not been designated a sexual predator, or a sexually violent offender, or a predicate sex offender, who is required to register or verify pursuant to this article and who has been registered for a minimum period of thirty years may be relieved of any further duty to register upon the granting of a petition for relief by the sentencing court or by the court which made the determination regarding duration of registration and level of notification. The sex offender shall bear the burden of proving by clear and convincing evidence that his or her risk of repeat offense and threat to public safety is such that registration or verification is no longer necessary. Such petition, if granted, shall not relieve the petitioner of the duty to register pursuant to this article upon conviction of any offense requiring registration in the future. Such a petition shall not be considered more than once every two years. In the event that the sex offender's petition for relief is granted, the district attorney may appeal as of right from the order pursuant to the provisions of articles fifty-five, fifty-six and fifty-seven of the civil practice law and rules. Where counsel has been assigned to represent the sex offender upon the ground that the sex offender is financially unable to retain counsel, that assignment shall be continued throughout the pendency of the appeal, and the person may appeal as a poor person pursuant to article eighteen-B of the county law.

2. Any sex offender required to register or verify pursuant to this article may petition the sentencing court or the court which made the determination regarding the level of notification for an order modifying the level of notification. The petition shall set forth the level of notification sought, together with the reasons for seeking such determination. The sex offender shall bear the burden of proving the facts supporting the requested modification by clear and convincing evidence. Such a petition shall not be considered more than annually. In the event that the sex offender's petition to modify the level of notification is granted, the district attorney may appeal as of right from the order pursuant to the provisions of articles fifty-five, fifty-six and fifty-seven of the civil practice law and rules. Where counsel has been assigned to represent the sex offender upon the ground that the sex offender is financially unable to retain counsel, that

assignment shall be continued throughout the pendency of the appeal, and the person may appeal as a poor person pursuant to article eighteen-B of the county law.

3. The district attorney may file a petition to modify the level of notification for a sex offender with the sentencing court or with the court which made the determination regarding the level of notification, where the sex offender (a) has been convicted of a new crime, or there has been a determination after a proceeding pursuant to section 410.70 of the criminal procedure law or section two hundred fifty-nine-i of the executive law that the sex offender has violated one or more conditions imposed as part of a sentence of a conditional discharge, probation, parole or post-release supervision for a designated crime, and (b) the conduct underlying the new crime or the violation is of a nature that indicates an increased risk of a repeat sex offense. The petition shall set forth the level of notification sought, together with the reasons for seeking such determination. The district attorney shall bear the burden of proving the facts supporting the requested modification, by clear and convincing evidence. In the event that the district attorney's petition is granted, the sex offender may appeal as of right from the order, pursuant to the provisions of articles fifty-five, fifty-six and fifty-seven of the civil practice law and rules. Where counsel has been assigned to represent the offender upon the ground that he or she is financially unable to retain counsel, that assignment shall be continued throughout the pendency of the appeal, and the person may proceed as a poor person, pursuant to article eighteen-B of the county law.

4. Upon receipt of a petition submitted pursuant to subdivision one, two or three of this section, the court shall forward a copy of the petition to the board and request an updated recommendation pertaining to the sex offender and shall provide a copy of the petition to the other party. The court shall also advise the sex offender that he or she has the right to be represented by counsel at the hearing and counsel will be appointed if he or she is financially unable to retain counsel. A returnable form shall be enclosed in the court's notice to the sex offender on which the sex offender may apply for assignment of counsel. If the sex offender applies for assignment of counsel and the

court finds that the offender is financially unable to retain counsel, the court shall assign counsel to represent the offender, pursuant to article eighteen-B of the county law. Where the petition was filed by a district attorney, at least thirty days prior to making an updated recommendation the board shall notify the sex offender and his or her counsel that the offender's case is under review and he or she is permitted to submit to the board any information relevant to the review. The board's updated recommendation on the sex offender shall be confidential and shall not be available for public inspection. After receiving an updated recommendation from the board concerning a sex offender, the court shall, at least thirty days prior to ruling upon the petition, provide a copy of the updated recommendation to the sex offender, the sex offender's counsel and the district attorney and notify them, in writing, of the date set by the court for a hearing on the petition. After reviewing the recommendation received from the board and any relevant materials and evidence submitted by the sex offender and the district attorney, the court may grant or deny the petition. The court may also consult with the victim prior to making a determination on the petition. The court shall render an order setting forth its determination, and the findings of fact and conclusions of law on which the determination is based. If the petition is granted, it shall be the obligation of the court to submit a copy of its order to the division. Upon application of either party, the court shall seal any portion of the court file or record which contains material that is confidential under any state or federal statute.

§ 168-p. Special telephone number. 1. Pursuant to section one hundred sixty-eight-b of this article, the division shall also operate a telephone number that members of the public may call free of charge and inquire whether a named individual required to register pursuant to this article is listed. The division shall ascertain whether a named person reasonably appears to be a person so listed and provide the caller with the relevant information according to risk as described in subdivision six of section one hundred sixty-eight-l of this article. The division shall decide whether the named person reasonably appears to be a person listed, based upon information from the caller providing information that shall include (a) an exact street address, including apartment number, driver's license number or birth date, along with additional information that may include social security number, hair color, eye color, height, weight, distinctive markings, ethnicity; or (b) any combination of the above listed characteristics if an exact birth date or address is not available. If three of the characteristics provided include ethnicity, hair color, and eye color, other identifying characteristics shall be provided. Any information identifying the victim by name, birth date, address or relation to the person listed by the division shall be excluded by the division.

2. When the telephone number is called, a preamble shall be played which shall provide the following information:

(a) notice that the caller's telephone number will be recorded;

(b) that there is no charge for use of the telephone number;

(c) notice that the caller is required to identify himself or herself to the operator and provide current address and shall be maintained in a written record;

(d) notice that the caller is required to be eighteen years of age or older;

(e) a warning that it is illegal to use information obtained through the telephone number to commit a crime against any person listed or to engage in illegal discrimination or harassment against such person;

(f) notice that the caller is required to have the birth date, driver's license or identification number, or address or other identifying information regarding the person about whom information is sought in order to achieve a positive identification of that person;

(g) a statement that the number is not a crime hotline and that any suspected criminal activity should be reported to local authorities;

(h) a statement that an information package which will include a description of the law and sex abuse and abduction prevention materials is available upon request from the division. Such information package shall include questions and answers regarding the most commonly asked questions about the sex offender registration act, and current sex abuse and abduction prevention material.

2-a. (a) The division shall establish a program allowing non-profit and not-for-profit youth services organizations to pre-register with the division for use of the telephone number. Pre-registration shall include the identification of up to two officials of the organization who may call the telephone number and obtain information on behalf of the organization. A pre-registered certificate issued under this subdivision shall be valid for two years, unless earlier revoked by the division for good cause shown. No fee shall be charged to an applicant for the issuance of a pre-registered certificate pursuant to this subdivision.

(b) An organization granted a pre-registered certificate pursuant to this subdivision may, upon calling the telephone number, inquire whether multiple named individuals are listed on the sex offender registry. Notwithstanding any per call limitation the division may place on calls by private individuals, the division shall allow such pre-registered organizations to inquire about up to twenty prospective coaches, leaders or volunteers in each call to the telephone number.

(c) For purposes of this subdivision, "youth services organization" shall mean a formalized program operated by a corporation pursuant to subparagraph five of paragraph (a) of section one hundred two of the not-for-profit corporation law that functions primarily to: (a) provide children the opportunity to participate in adult-supervised sporting activities; or (b) match children or groups of children with adult volunteers for the purpose of providing children with positive role models to enhance their development.

2-b. The division shall maintain a program allowing a transportation network company (TNC), as defined in section one thousand six hundred ninety-one of the vehicle and traffic law, to electronically submit multiple names, and other necessary identifying information as required by the division and in accordance with subdivision one of this section, of applicants applying to be TNC drivers for the purpose of determining whether such applicants are listed on the sex offender registry pursuant to this article. The division shall respond to such inquiry electronically, within four business days, and notify such TNC of any such applicant who is listed on the registry pursuant to this article. A TNC shall pre-register with the division before the electronic submission of names and shall agree in writing that information obtained by a TNC pursuant to this subdivision be used only for the purposes of determining eligibility of an applicant for a TNC permit, pursuant to sections one thousand six hundred ninety-six and one thousand six hundred ninety-nine of the vehicle and traffic law, by designated employees of such TNC and that such information shall not be distributed or disclosed except as specifically authorized by law.

3. Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the telephone number, the attorney general, any district attorney or any person aggrieved by the misuse of the number is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law. Such person or group of persons shall be subject to a fine of not less than five hundred dollars and not more than one thousand dollars.

4. The division shall submit to the legislature an annual report on the operation of the telephone number. The annual report shall include, but not be limited to, all of the following:

(a) number of calls received;

(b) a detailed outline of the amount of money expended and the manner in which it was expended for purposes of this section;

(c) number of calls that resulted in an affirmative response and the number of calls that resulted in a negative response with regard to whether a named individual was listed;

(d) number of persons listed; and

(e) a summary of the success of the telephone number program based upon selected factors.

§ 168-q. Subdirectory; internet posting. 1. The division shall maintain a subdirectory of level two and three sex offenders. The subdirectory shall include the exact address, address of the offender's place of employment and photograph of the sex offender along with the following information, if available: name, physical description, age and distinctive markings. Background information including all of the sex offender's crimes of conviction that require him or her to register pursuant to this article, modus of operation, type of victim targeted, the name and address of any institution of higher education at which the sex offender is enrolled, attends, is employed or resides and a description of special conditions imposed on the sex offender shall also be included. The subdirectory shall have sex offender listings categorized by county and zip code. Such subdirectory shall be made available at all times on the internet via the division homepage. Any person may apply to the division to receive automated e-mail notifications whenever a new or updated subdirectory registration occurs in a geographic area specified by such person. The division shall furnish such service at no charge to such person, who shall request e-mail notification by county and/or zip code on forms developed and provided by the division. E-mail notification is limited to three geographic areas per e-mail account.

2. Any person who uses information disclosed pursuant to this section in violation of the law shall in addition to any other penalty or fine imposed, be subject to a fine of not less than five hundred dollars and not more than one thousand dollars. Unauthorized removal or duplication of the subdirectory from the offices of local, village or city police department shall be punishable by a fine not to exceed one thousand dollars. In addition, the attorney general, any district attorney, or any person aggrieved is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for such action. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law.

§ 168-r. Immunity from liability. 1. No official, employee or agency, whether public or private, shall be subject to any civil or criminal liability for damages for any discretionary decision to release relevant and necessary information pursuant to this section, unless it is shown that such official, employee or agency acted with gross negligence or in bad faith. The immunity provided under this section applies to the release of relevant information to other employees or officials or to the general public.

2. Nothing in this section shall be deemed to impose any civil or criminal liability upon or to give rise to a cause of action against any official, employee or agency, whether public or private, for failing to release information as authorized in this section unless it is shown that such official, employee or agency acted with gross negligence or in bad faith.

§ 168-s. Annual report. The division shall on or before February first in each year file a report with the governor, and the legislature detailing the program, compliance with provisions of this article and effectiveness of the provisions of this article, together with any recommendations to further enhance the intent of this article.

§ 168-t. Penalty. Any sex offender required to register or to verify pursuant to the provisions of this article who fails to register or verify in the manner and within the time periods provided for in this article shall be guilty of a class E felony upon conviction for the first offense, and upon conviction for a second or subsequent offense shall be guilty of a class D felony. Any sex offender who violates the provisions of section one hundred sixty-eight-v of this article shall be guilty of a class A misdemeanor upon conviction for the first offense, and upon conviction for a second or subsequent offense shall be guilty of a class D felony. Any such failure to register or verify may also be the basis for revocation of parole pursuant to section two hundred fifty-nine-i of the executive law or the basis for revocation of probation pursuant to article four hundred ten of the criminal procedure law.

§ 168-u. Unauthorized release of information. The unauthorized release of any information required by this article shall be a class B misdemeanor.

§ 168-v. Prohibition of employment on motor vehicles engaged in retail sales of frozen desserts. No person required to maintain registration under this article (sex offender registration act) shall operate, be employed on or dispense goods for sale at retail on a motor vehicle engaged in retail sales of frozen desserts as defined in subdivision thirty-seven of section three hundred seventy-five of the vehicle and traffic law.

§ 168-w. Separability. If any section of this article, or part thereof shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder or any other section or part thereof.

ARTICLE 7

LABOR IN CORRECTIONAL INSTITUTIONS

§ 170. Contracts prohibited. 1. The commissioner shall not, nor shall any other authority whatsoever, make any contract by which the labor or time of any incarcerated individual in any state or local correctional facility in this state, or the product or profit of his or her work, shall be contracted, let, farmed out, given or sold to any person, firm, association or corporation; except that the incarcerated individuals in said correctional institutions may work for, and the products of their labor may be disposed of to, the state or any political subdivision thereof, any public institution owned or managed and controlled by the state, or any political subdivision thereof, provided that no incarcerated individual shall be employed or assigned to engage in any activity that involves obtaining access to, collecting or processing social security account numbers of other individuals.

2. Notwithstanding any other provision of law, it shall be lawful for an incarcerated individual of the department to work in an institution of the department in the manufacture and production of goods, including but not limited to, license plates, identification plates and insignia for vehicles, and for the department to sell or otherwise dispose of for profit such goods to the government of the United States or to any state of the United States, or political subdivision thereof, or any public corporation or eleemosynary association or corporation funded in whole or in part by any federal, state or local funds.

3. Notwithstanding any other provision of law, an incarcerated individual may be permitted to leave the institution under guard to voluntarily perform work for a nonprofit organization. As used in this

section, the term "nonprofit organization" means an organization operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

§ 171. Incarcerated individuals to be employed; products of labor of incarcerated individuals. 1. The commissioner and the superintendents and officials of all penitentiaries in the state may cause incarcerated individuals in the state correctional facilities and such penitentiaries who are physically capable thereof to be employed for not to exceed eight hours of each day other than Sundays and public holidays. Notwithstanding any other provision of this section, however, the commissioner and superintendents of state correctional facilities may employ incarcerated individuals on a volunteer basis on Sundays and public holidays in specialized areas of the facility, including kitchen areas, vehicular garages, rubbish pickup and grounds maintenance, providing, however, that incarcerated individuals so employed shall be allowed an alternative free day within the normal work week.

2. Such labor shall be either for the purpose of the production of supplies for said institutions, or for the state, or any political subdivision thereof, or for any public institution owned or managed and controlled by the state, or any political subdivision thereof; or for the purpose of industrial training and instruction, or partly for one, and partly for the other of such purposes.

§ 177. Labor of incarcerated individuals in state and local correctional facilities. 1. The labor of incarcerated individuals in the state correctional facilities, after the necessary labor for and manufacture of all needed supplies for said institutions, shall be primarily devoted to the state, the public buildings and institutions thereof, and the manufacture of supplies for the state, and public institutions thereof, and secondly to the political subdivisions of the state, and public institutions thereof;

2. The labor of incarcerated individuals in local correctional facilities after the necessary labor for and manufacture of all needed supplies for the same, shall be primarily devoted to the counties, respectively, in which said local correctional facilities are located, and the towns, cities and villages therein, and to the manufacture of supplies for the public institutions of the counties, or the political subdivisions thereof, and secondly to the state and the public institutions thereof;

3. However, for the purpose of distributing, marketing or sale of the whole or any part of the product of any correctional facility in the state, other than by said state correctional facilities, to the state or to any political subdivisions thereof or to any public institutions owned or managed and controlled by the state, or by any political subdivisions thereof, or to any public corporation, authority, or eleemosynary association funded in whole or in part by any federal, state or local funds, the sheriff of any such local correctional facility and the commissioner of corrections and community supervision may enter into a contract or contracts which may determine the kinds and qualities of articles to be produced by such institution and the method of distribution and sale thereof by the commissioner of corrections and community supervision or under his or her direction, either in separate lots or in combination with the products of other such institutions and with the products produced by incarcerated individuals in state correctional facilities. Such contracts may fix and determine any and all terms and conditions for the disposition of such products and the disposition of proceeds of sale thereof and any and all other terms and conditions as may be agreed upon, not inconsistent with the constitution. However, no such contract shall be for a period of more than one year and any prices fixed by such contract shall be the prices established pursuant to section one hundred eighty-six of this article for like articles or shall be approved by the department of corrections and community supervision and the director of the budget on presentation to them of a copy of such contract or proposed contract, and provided further that any distribution or diversification of industries provided for by such contract shall be in accordance with the rules and regulations established by the department of corrections and community

supervision or shall be approved by such department on presentation to it of a copy of such contract or proposed contract.

4. No product manufactured in whole or in part by incarcerated individuals in any correctional facility of the state or of a political subdivision thereof, shall be sold, or otherwise disposed of for profit, by any officer, or administrative body, of such institution, or by any officer, or administrative body of the state, or of a political subdivision thereof, except to the state itself or to a political subdivision thereof, the government of the United States or to any state of the United States, or to an officer or administrative body of the state, or of a political subdivision thereof, or to or for a public institution owned or managed and controlled by the state or by any political subdivision thereof, or to a public corporation, authority, or eleemosynary association funded in whole or in part by federal, state or local funds. In no case shall said products be purchased for the purpose of resale or for their disposition for profit in a manner not herein provided for in the first instance.

5. The commissioner shall be authorized to enter into agreements to sell food and drink products made at the food production center of the department to food kitchens, homeless shelters and other eleemosynary organizations funded in whole or in part by federal, state or local funds and to counties for governmental purposes. All proceeds from such sales shall be deposited into an account which shall only be used for the continued operation of the food production center. The charge for these products, included in the agreements between the commissioner and these eleemosynary organizations, shall not exceed the costs associated with the production and transportation of the products for sale. The commissioner may, in his or her discretion, and by whatever means he or she deems appropriate, notify such organizations of the availability of such products for sale.

6. Notwithstanding any other provision of law, an incarcerated individual may be permitted to leave the institution under guard to voluntarily perform work for a nonprofit organization. As used in this section, the term "nonprofit organization" means an organization

operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

7. A violation of any of the foregoing provisions shall constitute sufficient cause for the removal of such officer or board of administration by the duly constituted authority having jurisdiction.

§ 178. Participation in work release and other community activities. Nothing contained in this article shall be construed or applied so as to prohibit private employment of incarcerated individuals in the community under a work release program, or a residential treatment facility program formulated pursuant to any provision of this chapter.

§ 183. Classification of industries; report concerning industries. 1. It shall be the duty of the commissioner to distribute, among the correctional institutions under his jurisdiction, the labor and industries assigned to said institutions, due regard being had to the location and convenience of the prisons, and of the other institutions to be supplied, the machinery now therein and the number of prisoners, in order to secure the best service and distribution of the labor, and to employ the prisoners, so far as practicable, in occupations in which they will be most likely to obtain employment after their discharge from imprisonment. The commissioner shall change or dispose of the present plants and machinery in said institutions now used in industries which shall be discontinued, and which can not be used in the industries hereafter to be carried on in said prisons, due effort to be made by full notice to probable purchasers, in case of sales of industries or machinery, to obtain the best price possible for the property sold, and good will of the business to be discontinued.

2. The commissioner shall submit reports, quarterly, to the senate finance committee, the assembly ways and means committee, and the director of the budget, regarding industries under his jurisdiction. Such reports shall include, but not be limited to, the following:

(a) all materials, machinery or other property procured, and the cost thereof;

(b) all other expenditures and the nature thereof;

(c) all receipts and the nature thereof;

(d) all inventory on hand at the opening and closing of the quarter;

(e) recommendations regarding the continuance of the program.

§ 184. Articles manufactured to be furnished to the state or subdivisions thereof. 1. The commissioner is authorized and directed to cause to be manufactured or prepared by the incarcerated individuals in the state correctional facilities, such articles as are needed and used therein, and also, such articles as are required by the state or political subdivisions thereof, and in the buildings, offices and public institutions owned or managed and controlled by the state, including articles and materials to be used in the erection of the buildings, and including material for the construction, improvement or repair of highways, streets and roads.

2. All such articles manufactured or prepared in the state correctional facilities, or by incarcerated individuals, and not required for use therein, shall be of the styles, patterns, designs and qualities fixed by the department of corrections and community supervision, except where the same have been or may be fixed by the office of general services in the executive department. Such articles may be furnished to the state, or to any political subdivision thereof, or for or to any public institution owned or managed and controlled by the state, or any political subdivision thereof, government of the United States or to any state of the United States or subdivision thereof or to any public corporation, authority, or eleemosynary association funded in whole or in part by any federal, state or local funds, at and for such prices as shall be fixed and determined as hereinafter provided, upon the requisitions of the proper officials thereof. No article so manufactured or prepared shall be purchased from any other source, for the state or public institutions of the state, or the political subdivisions thereof, or public benefit corporations, authorities or commissions, unless the commissioner of corrections and

community supervision shall certify that the same can not be furnished upon such requisition, and no claim therefor shall be audited or paid without such certificate.

§ 185. Estimates of articles required to be furnished. On or before July first in each year, the proper officials of the state, and the political subdivisions thereof, and of the institutions of the state, or political subdivisions thereof, shall report to the department of corrections and community supervision estimates for the ensuing year of the amount of supplies of different kinds required to be purchased by them that can be furnished by the correctional facilities in the state. The commissioner of corrections and community supervision is authorized to make regulations for said reports, to provide for the manner in which requisitions shall be made for supplies, and to provide for the proper diversification of the industries in the correctional facilities.

§ 186. Prices of labor performed and articles manufactured in correctional facilities. 1. The commissioner shall establish the prices at which all services performed, and all articles manufactured in the correctional facilities in this state, and furnished to the state, or the political subdivisions thereof, or to the public institutions thereof, or to public benefit corporations, authorities or commissions. However, prices for goods or services furnished by the local correctional facilities to or for the county in which they are located, or the political subdivisions thereof, shall be fixed by the board of supervisors of such counties, except the counties located within New York city, in which the prices shall be fixed by the commissioner. It shall also be the duty of such boards, respectively, to classify the buildings, offices and institutions owned or managed and controlled by the state, and the political subdivisions thereof, and to fix and determine the styles, patterns, designs and qualities of the articles to be manufactured for such buildings, offices and public institutions, except where the same have been fixed or their specifications approved by the office of general services in the executive department. So far as practicable, all supplies used in such buildings, offices and public institutions shall be uniform for each class, and of the styles, patterns, designs and qualities that can be manufactured in the correctional facilities in this state.

2. The prices established by the commissioner shall be based upon costs as determined pursuant to this subdivision, but shall not exceed a reasonable fair market price determined at or within ninety days before the time of sale. Fair market price as used herein means the price at which a vendor of the same or similar product or service who is regularly engaged in the business of selling such product or service offers to sell such a product or service under similar terms in the same market. However, the price established by the commissioner for license plates sold to the New York state department of motor vehicles shall in no event exceed an amount approved by the director of the budget.

First instance appropriations to the department of corrections and community supervision for correctional industries shall be reimbursed pursuant to an agreement with the director of the budget. In the absence of a first instance appropriation, costs shall be determined in accordance with an agreement between the commissioner of corrections and community supervision and the director of the budget. Any such agreement shall include, among other provisions deemed necessary by the budget director for the purposes of enabling programmatic overview and fiscal controls, one or more methodologies for the determination of costs attributable to correctional industries or to any product manufactured in the institutions of the department or distributed, marketed or sold by the commissioner pursuant to this section, section one hundred seventy-seven of this article or section one hundred seventy-five of the state finance law.

3. A purchaser of any such product or services may, at any time prior to or within thirty days of the time of sale, appeal the purchase price on the basis that it unreasonably exceeds fair market price. Such appeal shall be raised in a form to be provided for by the commissioner pursuant to rule and shall include a verified statement setting forth the basis of an alternative fair market price determined according to the standards for establishing prices set forth in subdivision two of

this section.

An appeal brought by such a purchaser as to the reasonableness of the fair market price established pursuant to subdivision two of this section shall be decided by majority vote of a three-member price review board consisting of the director of the budget, the commissioner and the commissioner of the office of general services or their representatives.

All hearings before such price review board shall be governed by the rules to be adopted and prescribed by such board. The hearings of such board may, in the discretion of a majority of its members, be open to the public, but shall not be bound by the technical rules of evidence. The price review board shall permit the parties to such an appeal to present such evidence, in person or through their attorneys, as the board may deem necessary for its determination. A stenographic record shall be kept of any proceeding before such board and the decision of the board shall be in writing and state the reasons for such decision.

The decision of such board as to the reasonableness of the price established by the commissioner shall be conclusive on all parties. If the board finds that a price unreasonably exceeds the fair market price, it may adjust the sales price with respect to such purchaser. Prices so adjusted shall otherwise apply prospectively to purchases made subsequent to such adjustment until such time as new prices are established pursuant to subdivision two of this section. In the event that payment has been made, upon such adjustment of price, any excess paid to the state shall be refunded to such purchaser on a voucher signed by the commissioner within amounts available therefor or at the option of the purchaser, the commissioner may credit such excess amount toward any future purchase.

4. The state or the political subdivisions thereof, or public institutions thereof, or public benefit corporations, authorities or commissions shall purchase the products manufactured in correctional institutions in this state in accordance with their needs and at prices established pursuant to this section.

§ 187. Earnings of incarcerated individuals. 1. Every incarcerated individual confined in a state correctional facility, subject to the rules and regulations of the department of corrections and community supervision, and every incarcerated individual confined in a local correctional facility, in the discretion of the sheriff thereof, may receive compensation for work performed during his or her imprisonment. Such compensation shall be graded by the department of corrections and community supervision with regard to incarcerated individuals employed in prison industries, based upon the work performed by such prisoners for prisoners confined in state correctional facilities, and by the sheriffs in all local correctional facilities for incarcerated individuals confined therein.

2. The department of corrections and community supervision shall adopt rules, subject to the approval of the director of the budget, for establishing in all of the state correctional facilities a system of compensation for the incarcerated individuals confined therein. Such rules shall provide for the payment of compensation to each incarcerated individual, who shall meet the requirements established by the department of corrections and community supervision, based upon the work performed by such incarcerated individuals.

3. The department shall prepare graded wage schedules for incarcerated individuals, which schedules shall be based upon classifications according to the value of work performed by each. Such schedules need not be uniform in all institutions. The rules of the department shall also provide for the establishment of a credit system for each incarcerated individual and the manner in which such earnings shall be paid to the incarcerated individual or his or her dependents or held in trust for him or her until his or her release.

4. Any compensation paid to an incarcerated individual under this article shall be based on the work performed by such incarcerated individual. Compensation may be paid from moneys appropriated to the department and available to facilities for nonpersonal service.

§ 189. Disposition of moneys paid to prisoner for his labor. The amount of such compensation to the credit of any prisoner may be drawn by the prisoner during his imprisonment, only upon approval of the commissioner to aid dependent relatives of such prisoner, or for such other purposes as the commissioner may approve. Such disbursement to aid a dependent relative of a prisoner may be made without the consent of such prisoner upon the certificate of the commissioner of welfare, or other officer performing the duties of a commissioner of welfare, of the community in which such dependent is located. Any balance to the credit of any prisoner at the time of his conditional release as provided by this chapter shall be subject to the draft of the prisoner in such amounts and at such times as the commissioner shall approve; provided, however, that at the date of absolute discharge of any prisoner the balance as aforesaid shall be paid to such prisoner.

§ 190. Monthly statement of receipts and expenditures for industries. The warden of each of the state prisons shall, on the first of each month, make a full detailed statement of all materials, machinery or other property procured, and of the cost thereof, and of the expenditures made during the last preceding month for manufacturing purposes, together with a statement of all materials then on hand to be manufactured, or in process of manufacture, or manufactured, and of machinery, fixtures or other appurtenances for the purpose of carrying on the labor of the prisoners, and the amount and kinds of work done, and the earnings realized, and the total amount of moneys coming into his or her hands as such warden during such last preceding month as the proceeds of the labor of the prisoners at such prison, which statement shall be verified by the oath of such warden to be just and true, and shall be by him or her forwarded to the department.

§ 193. Disposition of machinery on discontinuance of industry. Whenever any trade or industry is discontinued at any state correctional institution and it appears to the satisfaction of the commissioner, that such trade or industry will not again be put in operation in any state correctional institution, he must report that fact to the comptroller, and at the same time furnish the comptroller with a schedule of the machinery, tools, apparatus and other appurtenances belonging to such trade or industry or used in connection therewith, and an estimate of the value of same, and also the quantity and value of the stock and manufactured product of such trade or industry then on hand, and the commissioner shall, with the approval of the comptroller, sell and dispose of all such unused and unnecessary machinery, tools, apparatus, stock and manufactured product. Said property shall be sold as provided in section one hundred seventy-eight of the state finance law. Any moneys received from such sale as aforesaid, after deducting all necessary and actual expenses, shall be deposited in the treasury to the credit of the correctional industry fund.

§ 196. Violations of institutional labor regulations. Any contract made by the commissioner of correction or warden of any prison, or by any officer or any other authority whatsoever, of any prison, reformatory, penitentiary or other correctional institution of this state, in violation of, or contrary to, the provisions of this article, shall be null and void. It shall be the duty of any such officer or authorities to furnish to the attorney-general, upon demand therefor, a true copy, if in writing, and if not, in substance, of any contract made by such officer or authorities, relating in any way to the system of labor adopted, or to the employment of prisoners in any of said prisons, reformatories, penitentiaries or other correctional institutions. Whenever the attorney-general shall be satisfied that any contract made as aforesaid is contrary to or in violation of this article, or that any of the officers or authorities aforesaid have entered into or are engaged in any contract or arrangement for the labor of prisoners, or relating to the system adopted or continued in said institutions, which contract or arrangement is contrary to or in violation of law as aforesaid, if he shall be of the opinion that the facts require such action, he is hereby authorized to bring an action in the supreme court in the name of the people of the state of New York, in any county which he may select, for the purpose of testing the validity of any contract or arrangement made by any of the officers herein named, relating in any way to the system of labor adopted, or the employment of prisoners in any of said prisons, reformatories, penitentiaries or other correctional institutions, or to determine the validity of any act or thing done by any officer herein mentioned, which act or thing shall be alleged to have been in violation of this article. Any party to such contract, agreement or arrangement as aforesaid, or interested in the determination of such action, shall be made defendant, and pending the trial or hearing of the facts alleged, or of any issue made as aforesaid, the court shall, upon notice of the attorney-general, and upon a petition duly verified showing the making of any contract or arrangement in violation of the provisions of this article, or the doing of any act or thing by any of the parties defendant, in violation of this article, grant an injunction order, restraining the parties named in said order from the further prosecution of the business complained of, or from the further performance of the contract or arrangement claimed to have been entered into as aforesaid, and to restrain and enjoin such officer from the further continuance of any act alleged to be in violation of this article. And any disobedience of such injunction order shall be punishable as provided by article nineteen of the judiciary law. And upon any trial had, judgment shall follow the findings of fact made by the court or jury, as in other cases, and with costs, in the discretion of the court.

§ 197. Occupational therapy. Nothing in this article contained shall be deemed to apply to occupational therapy in any penal or correctional institution, or to prohibit the sale of the products resulting therefrom. Such sale and the disposition of the proceeds thereof shall be governed by rules and regulations of the head of the department or other like governmental authority having jurisdiction. For the purpose of this section, occupational therapy is defined as any activity in the nature of individual art or handicraft, prescribed, guided or supervised for the purpose of contributing to the welfare or rehabilitation of any incarcerated individual or incarcerated individuals of such institutions.

§ 198. Incarcerated individual occupational therapy fund. 1. The commissioner of corrections and community supervision may authorize the superintendent or director of any correctional institution to establish an incarcerated individual occupational therapy fund for the receipt of proceeds from a product sold, as authorized by section one hundred ninety-seven of this article, by one or more incarcerated individuals as incident to an avocational or vocational project approved by the commissioner, including but not limited to, art, music, drama, handicraft, or sports.

2. Pursuant to rules, regulations or directions of the commissioner, moneys of the fund may: (a) be made available to the superintendent or director to be used for the general benefit of the incarcerated individuals of the correctional institution wherein the product was produced, including but not limited to, furnishing materials and supplies to an incarcerated individual or incarcerated individuals for an avocational or vocational project and the transporting of a product thereof for sale, display or otherwise and for recreational activities; or (b) be disbursed as follows: (i) an amount equal to the proceeds from the sale of a product produced by one incarcerated individual may be deposited to the account of such incarcerated individual pursuant to section one hundred sixteen of this chapter; or (ii) an amount equal to the proceeds from the sale of a product produced by two or more incarcerated individuals may be divided equally among such incarcerated individuals and deposited to their respective accounts pursuant to section one hundred sixteen of this chapter.

3. In determining the amount of the proceeds from a sale of a product that may be deposited to the account of an incarcerated individual, the commissioner may provide for the deduction from the sum of the proceeds the reasonable expenses of the department of corrections and community supervision incident to the sale, including but not limited to, the value of materials and supplies for the production of the product supplied without financial charge to the incarcerated individual and the expenses of transporting the product for sale or display or otherwise.

*** § 199. Establishment of inmate employment list.** 1. The department of correctional services shall maintain a list of inmates who are eligible for consideration for release on parole or otherwise within twelve months. Such list shall be amended every other month in order to add newly eligible inmates and to remove from the list inmates who have been discharged from the custody of the department. Inmates shall be included in such list only upon their own written request. The list shall be known as the "inmate-employment list" and it shall contain the names of inmates, their home towns, the vocational and educational training programs completed by the inmates while incarcerated, jobs held by the inmates while incarcerated, the institution at which the inmate is lodged, and other information the department feels would be useful to prospective employers of such inmates upon their release. Such list shall be provided, upon written request, to approved prospective employers who have first submitted information required by the department. The department shall permit approved prospective employers to visit facilities operated by the department in order to interview inmates whose names appear on the employment lists for the purpose of possible employment upon the inmate's release. Approved prospective employers wishing to interview inmates must notify the department in writing. If the department is unable to permit job interviews on the date requested by the approved prospective employer, it shall provide an alternative date.

2. For the purposes of this section only the term "approved prospective employers" shall mean those individuals or corporations who have stated an interest in employing former inmates and have supplied the information requested by the department, which shall be reviewed by the commissioner of correctional services prior to designating them as approved prospective employers.

* NB Expired June 1, 1980

§ 200. Department programs and incentive allowances. 1. For the purpose of this section the term "incentive allowance" means monies allowed an incarcerated individual of a state correctional institution for the efficient and willing performance of duties assigned or progress and achievement in educational, career and industrial training programs.

2. In lieu of the system of labor in correctional institutions established by this article, the commissioner may, in order to facilitate an incarcerated individual's eventual reintegration into society, establish for the incarcerated individuals in one or more state correctional institutions a system of educational, career and industrial training programs, and of incentive allowances for each such program.

3. For each institution wherein such system is established the commissioner shall prepare, and may at times revise, graded incentive allowance schedules for the incarcerated individuals within each such program based upon the levels of performance and achievement by an incarcerated individual in a program to which he or she has been assigned. Upon the approval of the director of the budget such schedules or revisions thereof may be promulgated.

4. The commissioner shall also provide for the establishment of a credit system for each incarcerated individual and the manner in which incentive allowances shall be paid to the incarcerated individual or his or her dependents or held in trust for him or her until his or her release. The amount of incentive allowed to the credit of any incarcerated individual shall be disposed of as provided by section one hundred eighty-nine of this article.

5. Incentive allowances may be paid from monies provided to the department and available to the facilities for non-personal services or from the correctional industry training and career education fund.

6. Except as otherwise provided by this section, those provisions of law dealing with labor in state correctional institutions shall apply to industrial training in state correctional institutions including the disposition of services rendered and products produced incidental to such industrial training.

ARTICLE 8

COMMUNITY SUPERVISION

§ 201. Authority and responsibility for community supervision. 1. The department shall have responsibility for the preparation of reports and other data required by the state board of parole in the exercise of its independent decision making functions.

2. In accordance with the provisions of this chapter, the department shall supervise incarcerated individuals released to community supervision, except that the department may consent to the supervision of a released incarcerated individual by the United States parole commission pursuant to the witness security act of nineteen hundred eighty-four.

3. To facilitate the supervision of all incarcerated individuals released to community supervision, the commissioner shall consider the implementation of a program of graduated sanctions, including but not limited to the utilization of a risk and needs assessment instrument that would be administered to all incarcerated individuals eligible for community supervision. Such a program would include various components including approaches that concentrate supervision on new releases, alternatives to incarceration for technical parole violators and the use of enhanced technologies.

4. The department shall conduct such investigations as may be necessary in connection with alleged violations of community supervision.

5. The department shall assist incarcerated individuals eligible for community supervision and individuals who are on community supervision to secure employment, educational or vocational training, and housing. Any program the department requires a person on community supervision to take as a condition of such supervision shall not unreasonably interfere with such person's employment, educational or vocational training schedule unless such program is a residential treatment program.

6. The department shall have the duty to provide written notice to incarcerated individuals prior to release to community supervision or pursuant to subdivision six of section 410.91 of the criminal procedure law of any requirement to report to the office of victim services any funds of a convicted person as defined in section six hundred thirty-two-a of the executive law, the procedure for such reporting and any potential penalty for a failure to comply.

7. The department shall encourage apprenticeship training of such persons through the assistance and cooperation of industrial, commercial and labor organizations.

8. The department may establish a community supervision transition program, which is hereby defined as community-based residential facilities designed to aid community supervision violators to develop an increased capacity for adjustment to community living. Presumptive releasees, parolees, conditional releasees and those under post-release supervision who have either (a) been found pursuant to article twelve-B of the executive law to have violated one or more conditions of release in an important respect, or (b) allegedly violated one or more of such conditions upon a finding of probable cause at a preliminary hearing or upon the waiver thereof may be placed in a community supervision transition facility. Placement in such a facility upon a finding of probable cause or the waiver thereof shall not preclude the conduct of a revocation hearing, nor, absent a waiver, operate to deny the releasee's

right to such revocation hearing.

10. The department shall have the power to grant and revoke certificates of relief from disabilities and certificates of good conduct as provided for by law.

11. In any case where a person is entitled to jail time credit under the provisions of paragraph (c) of subdivision three of section 70.40 of the penal law, to certify to the person in charge of the institution in which such person's sentence is being served the amount of such credit.

12. The department shall supervise all persons who are released and subject to a regimen of strict and intensive supervision and treatment pursuant to article ten of the mental hygiene law. The department shall issue and periodically update rules and regulations concerning the supervision of such persons in consultation with the office of sex offender management in the division of criminal justice services and the office of mental health.

13. The department shall perform such other functions as are necessary and proper in furtherance of the objective of maintaining an effective, efficient and fair system of community supervision.

14. The commissioner shall promulgate such regulations as are necessary and proper for the efficient performance of the functions set forth in this article. He or she shall have the authority to contract with public or private agencies for the performance of the functions set forth in this section as are necessary or appropriate to promote the efficient performance of such responsibilities, except the functions defined in subdivisions one, two, four, ten and twelve of this section.

15. The commissioner shall provide an annual report to the temporary president of the senate, the speaker of the assembly, the minority leader of the senate and minority leader of the assembly, commencing January first, two thousand twelve. Such report shall include but not be limited to the number of persons: released to community supervision and the release type; supervised on community supervision during the

preceding year; whose community supervision was revoked; returned to incarceration for conviction of a new felony committed while on community supervision; transferred out of state pursuant to the Interstate Compact for Adult Supervision. In addition, the commissioner shall provide other available information regarding community supervision to the temporary president of the senate, the speaker of the assembly, the minority leader of the senate and minority leader of the assembly upon request.

§ 203. Regulations for release of certain sex offenders. 1. The commissioner shall promulgate rules and regulations that shall include guidelines and procedures on the placement of sex offenders designated as level two or level three offenders pursuant to article six-C of this chapter. Such regulations shall provide instruction on certain factors to be considered when investigating and approving the residence of level two or level three sex offenders released on presumptive release, parole, conditional release or post-release supervision. Such factors shall include the following:

(a) the location of other sex offenders required to register under the sex offender registration act, specifically whether there is a concentration of registered sex offenders in a certain residential area or municipality;

(b) the number of registered sex offenders residing at a particular property;

(c) the proximity of entities with vulnerable populations;

(d) accessibility to family members, friends or other supportive services, including, but not limited to, locally available sex offender treatment programs with preference for placement of such individuals into programs that have demonstrated effectiveness in reducing sex offender recidivism and increasing public safety; and

(e) the availability of permanent, stable housing in order to reduce the likelihood that such offenders will be transient.

2. The department shall have the duty, prior to the release to community supervision of an incarcerated individual designated a level two or three sex offender pursuant to the sex offender registration act,

to provide notification to the local social services district in the county in which the incarcerated individual expects to reside, when information available or any other pre-release procedures indicates that such incarcerated individual is likely to seek to access local social services for homeless persons. The department shall provide such notice, when practicable, thirty days or more before such incarcerated individual's release, but in any event, in advance of such incarcerated individual's arrival in the jurisdiction of such local social services district.

§ 205. Merit termination of sentence and discharge from presumptive release, parole, conditional release and release to post-release supervision. 1. The department may grant to any person a merit termination of sentence from presumptive release, parole, conditional release or release to post-release supervision prior to the expiration of the full term or maximum term, provided it is determined by the department that such merit termination is in the best interests of society, such person is not required to register as a sex offender pursuant to article six-C of this chapter, and such person is not on presumptive release, parole, conditional release or release to post-release supervision from a term of imprisonment imposed for any of the following offenses, or for an attempt to commit any of the following offenses:

(a) a violent felony offense as defined in section 70.02 of the penal law;

(b) murder in the first degree or murder in the second degree;

(c) an offense defined in article one hundred thirty of the penal law;

(d) unlawful imprisonment in the first degree, kidnapping in the first degree, or kidnapping in the second degree, in which the victim is less than seventeen years old and the offender is not the parent of the victim;

(e) an offense defined in article two hundred thirty of the penal law involving the prostitution of a person less than nineteen years old;

(f) disseminating indecent material to minors in the first degree or disseminating indecent material to minors in the second degree;

(g) incest;

(h) an offense defined in article two hundred sixty-three of the penal law;

(i) a hate crime as defined in section 485.05 of the penal law; or

(j) an offense defined in article four hundred ninety of the penal law.

2. (a) A merit termination granted by the department under this section shall constitute a termination of the sentence with respect to which it was granted. No such merit termination shall be granted unless the department is satisfied that termination of sentence from presumptive release, parole, conditional release or post-release supervision is in the best interest of society, and that the parolee or releasee, otherwise financially able to comply with an order of restitution and the payment of any mandatory surcharge previously imposed by a court of competent jurisdiction, has made a good faith effort to comply therewith.

(b) Notwithstanding any other provision of law, a person granted merit termination pursuant to this section shall be provided a certificate of relief from disabilities pursuant to section seven hundred three of this chapter or a certificate of good conduct under section seven hundred three-b of this chapter, as applicable.

3. A merit termination of sentence may be granted after two years of presumptive release, parole, conditional release or release to post-release supervision to a person serving a sentence for a class A felony offense as defined in article two hundred twenty of the penal law. A merit termination of sentence may be granted to all other eligible persons after one year of presumptive release, parole, conditional release or release to post-release supervision.

4. The department must grant termination of sentence after three years of unrevoked presumptive release or parole to a person serving an indeterminate sentence for a class A felony offense defined in article two hundred twenty of the penal law, and must grant termination of sentence after two years of unrevoked presumptive release or parole to a person serving an indeterminate sentence for any other felony offense defined in article two hundred twenty or two hundred twenty-one of the

penal law.

5. The commissioner, in consultation with the chairman of the board of parole, shall promulgate rules and regulations governing the issuance of merit terminations of sentence and discharges from presumptive release, parole, conditional release or post-release supervision to assure that such terminations and discharges are consistent with public safety. The board of parole shall have access to merit termination application case files and corresponding decisions to assess the effectiveness of the rules and regulations in ensuring public safety. Such review will in no manner effect the decisions made with regard to individual merit termination determinations.

§ 206. Applications for presumptive release or conditional release. 1. All requests for presumptive release or conditional release shall be made in writing on forms prescribed and furnished by the department. Within one month from the date any such application is received, if it appears that the applicant is eligible for presumptive release or conditional release or will be eligible for such release during such month, the conditions of release shall be fixed in accordance with rules prescribed by the board of parole. Such conditions shall be substantially the same as conditions imposed upon parolees.

2. No person shall be presumptively released or conditionally released, unless the applicant has agreed in writing to the conditions of release. The agreement shall state in plain, easily understandable language the consequences of a violation of one or more of the conditions of release.

§ 207. Cooperation. It shall be the duty of the commissioner of corrections and community supervision to insure that all officers and employees of the department shall at all times cooperate with the board of parole and shall furnish to such members and employees of the board of parole such information as may be appropriate to enable them to perform their independent decision making functions. It is also his or her duty to ensure that the functions of the board of parole are not hampered in any way, including but not limited to: a restriction of resources including staff assistance; limited access to vital information; and presentation of incarcerated individual information in a manner that may inappropriately influence the board in its decision making.

§ 208. Deputization of out-of-state officers. The commissioner is hereby authorized and empowered to deputize any parole officer or peace officer of another state to act as an officer and agent of this state in effecting the return of any person who has violated the terms and conditions of parole or probation as granted by this state.

Any deputization pursuant to this section shall be in writing and any person authorized to act as an agent of this state pursuant hereto shall carry formal evidence of his or her deputization and shall produce the same upon demand.

The commissioner is hereby authorized, subject to the approval of the comptroller, to enter into contracts with similar officials of any other state or states for the purpose of sharing an equitable portion of the cost of effecting the return of any person who has violated the terms and conditions of parole or probation as granted by this state.

*** § 209. Notice of voting rights.** The department shall notify each person serving a period of community supervision verbally and in writing of his or her right to vote and provide such person with a form of application for voter registration and a declination form, offer such person assistance in filling out the appropriate form, and provide such person written information distributed by the board of elections on the importance and the mechanics of voting. Such person may choose to either submit his or her completed application to the state board or county board where such person resides or have the department transmit it on his or her behalf. Where such person chooses to have the department transmit the application, the department shall transmit the completed application to the state board or county board where such person resides.

* NB There are 2 § 209's

*** § 209. Permitted activities.** Where any person is granted presumptive release, parole, conditional release or release to post-release supervision, such person shall not be deemed to be in violation of and the department shall not terminate such granted presumptive release, parole, conditional release, release to post-release supervision, or any other type of supervised release solely because such person engages in bona fide work for an employer, including travel time to and from bona fide work, during curfew times set with a sentence of probation or conditional discharge. For purposes of this section, bona fide work is work performed as an employee for an employer, as defined in section two of the labor law.

* NB There are 2 § 209's

§ 210. Permitted activities. Where any person is granted presumptive release, parole, conditional release or release to post-release supervision, such person shall not be deemed to be in violation of and the department shall not terminate such granted presumptive release, parole, conditional release or release to post-release supervision solely because such person participated in work related labor protests, or in a lawful labor dispute, strike or other concerted stoppage of work or slowdown pursuant to article twenty of the labor law or the national labor relations act (29 U.S.C. sections 151 et. seq.).

ARTICLE 11

EXECUTIVE CLEMENCY

§ 261. Subpoena on application for executive clemency. The governor shall have the power in any matter pertaining to an application for clemency, to issue a subpoena to compel the attendance of a person before him at a time and place designated in said subpoena; and he shall also have the power to compel the production of any book, paper or writing by a subpoena duces tecum, directed to a person in whose custody either may be, at a time and place designated in said subpoena. But the provisions of this article shall not apply to any book, paper or writing filed in any office of record in any civil division of this state.

§ 262. Appointment of person to hear application. The governor may appoint a person to conduct a hearing in a matter pertaining to an application for clemency, and his compensation shall not exceed ten dollars for each day's actual service. Such person, upon the conclusion of such hearing, shall forward to the governor without delay, the testimony taken before him. The governor may direct that a person subpoenaed by him, in conformity to the provisions of the preceding section, appear before a person designated by him to conduct a hearing as provided by this section; and a person so subpoenaed shall produce any book, paper or writing before said person so designated by the governor, in conformity with the provisions of the preceding section of this article.

§ 263. Oath of witnesses. The governor or a person designated by him to conduct a hearing in a matter pertaining to an application for clemency, shall have power to administer an oath to a person brought before him.

§ 264. Form and service of subpoena; witness fees. A subpoena, or subpoena duces tecum, issued in conformity with the provisions of this article, shall be signed by the governor's secretary, and be attested by the privy seal of the state. A subpoena issued under this section shall be regulated by the civil practice law and rules.

§ 265. Penalty for failure of witness to appear. A person subpoenaed who fails to appear, refuses to answer, or produce a book, paper or writing as provided in this article, shall upon conviction be adjudged guilty of a criminal contempt. And in addition thereto a person so subpoenaed shall be subject to all the provisions of law which now or may hereafter exist, relating to witnesses in civil or criminal actions at law; and the governor shall possess all the powers in relation to said provisions which are possessed by any court or judge, but he shall be limited to the matters arising under the provisions of this article.

§ 266. Disbursements. Any disbursements necessary to be made for any of the purposes mentioned in this article shall be paid from the treasury upon the approval of the governor's secretary, on the audit and warrant of the comptroller, out of any moneys in the treasury not otherwise appropriated.

ARTICLE 12

LOCAL CONDITIONAL RELEASE COMMISSION

§ 270. Definitions. As used in this article, the following terms have the following meanings:

1. "Commission" means the local conditional release commission.

2. "County" means each county in the state, except a county within the city of New York.

3. "County executive" means the county commissioner, county manager, county director or county president.

4. "Division" means the division of criminal justice services.

§ 271. Local conditional release commission; organization. 1. Every county, and the city of New York, may adopt a local law establishing a local conditional release commission. Such commission shall be appointed by the county executive, upon the advice and consent of the county legislature, or in the case of the city of New York, such commission shall be appointed by the mayor, upon the advice and consent of the city council. Each such commission shall consist of at least five members. Each member of the commission shall have graduated from an accredited four year college or university and shall have had at least five years of experience in the field of criminology, administration of criminal justice, law enforcement, probation, parole, law, social work, social science, psychology, psychiatry or corrections.

2. The term of office of each member of such commission shall be for four years; provided, however, that any member chosen to fill a vacancy occurring otherwise than by expiration of term shall be appointed for the remainder of the unexpired term of the member whom the person is to succeed. Vacancies caused by expiration of term or otherwise shall be filled in the same manner as original appointments.

3. No member of the commission shall serve as a representative of any political party on an executive committee or other governing body thereof, as an executive officer or employee of any political committee,

organization or association, nor be a judge or justice, a sheriff or district attorney.

4. Any member may be removed by the county executive, or the mayor in the case of the city of New York, for cause, after notice and an opportunity to be heard.

5. The director of the local probation department, or such director's designee, shall serve as an ex-officio, non-voting member of the commission.

6. The local probation department shall assign staff support to the commission.

§ 272. Local conditional release commission; function, powers and duties. The commission shall:

1. have the power and duty of determining which persons sentenced within the county, or the city of New York, and serving a definite sentence of imprisonment and eligible for conditional release pursuant to subdivision two of section 70.40 of the penal law may be released on conditional release and when and under what conditions in accordance with section two hundred seventy-three of this article;

2. have the power to determine, as each incarcerated individual applies for conditional release, the need for supplemental investigation of the background of such incarcerated individual and cause such investigation as may be necessary to be made as soon as practicable. The commission may require that the probation department located in the jurisdiction of the commission conduct such supplemental investigation. The results of such investigation together with all other information compiled by the local correctional facility and the complete criminal record and family court record of such incarcerated individual shall be readily available when the conditional release of such incarcerated individual is being considered. Such information shall include a complete statement of the crime for which the incarcerated individual

has been sentenced, the circumstances of such crime, all presentence memoranda, the nature of the sentence, the court in which such incarcerated individual was sentenced, the name of the judge and district attorney and copies of such probation reports as may have been made as well as reports as to the incarcerated individual's social, physical, mental and psychiatric condition and history;

3. have the legal custody of persons conditionally released and placed under the supervision of the local probation department for a period of one year, or until returned to the custody of the local correctional facility located in the jurisdiction of the commission, as the case may be;

4. have the power to revoke the conditional release of any person in the legal custody of the commission and to issue declarations of delinquency and authorize the issuance of a warrant for the retaking of such person, as provided for in section two hundred seventy-four of this article;

5. for the purpose of any investigation necessary in the performance of its duties, have the power to issue subpoenas, to compel the attendance of witnesses and the production of books, papers, and other documents pertinent to the subject of its inquiry. The minutes of all commission meetings must be recorded and such records shall be retained according to applicable standards;

6. have the power to authorize any members thereof to administer oaths and take the testimony of persons under oath;

7. notify, in writing, the initial sentencing court, the district attorney and defense counsel within five business days of receipt of an application for a local conditional release filed under this article and provide a fifteen day period for comment on such application. Comments submitted under this subdivision shall be provided to the commission and all parties;

8. notify in writing the appropriate local probation department prior

to release of a conditionally released person of such department's responsibilities to supervise such person;

Such notice shall include the name and residence of the person, the date of release, the conditions of release, and all necessary records maintained on such person to aid the local probation department in the performance of its responsibilities pursuant to subdivision six of section two hundred fifty-six of the executive law;

9. have the power to transfer the legal custody of persons conditionally released in accordance with the provisions of section two hundred seventy-five of this article;

10. present an annual report to the county legislature, or in the case of the city of New York, to the city council, of its findings and actions on submitted applications.

§ 273. Conditional release; procedures for application and determinations. 1. Any incarcerated individual who is eligible for conditional release by a commission pursuant to subdivision two of section 70.40 of the penal law and who has served a minimum period of sixty days in a local correctional facility may apply for conditional release. Eligibility criteria shall be limited to incarcerated individuals:

(a) who have not been previously convicted and who do not stand convicted of any crime which would make such incarcerated individual ineligible for the receipt of merit time pursuant to section eight hundred three of this chapter, any crime pursuant to article two hundred thirty-five of the penal law when the victim of such offense was under the age of eighteen at the time of the offense, or any crime which the commission determines constituted a crime of domestic violence;

(b) having jail records which make them eligible for a reduction of sentence under section eight hundred four of this chapter;

(c) having verified community ties in one of the following areas: employment, permanent residence and family.

Application shall be made in writing, on forms prescribed by the division, to the commission in the county where the sentence was imposed.

2. The commission shall review and make a determination on each application within thirty days of receipt of such application. No determination granting or denying such application shall be valid unless made by a majority vote of at least three commission members present. No release shall be granted unless there is a reasonable probability that, if such incarcerated individual is released, he or she shall live and remain at liberty without violating the law, and that his or her release is not incompatible with the welfare of society and shall not so deprecate the seriousness of his or her crime as to undermine respect for law.

3. If conditional release is granted, the commission shall set the conditions for release of the person in accordance with rules and regulations promulgated by the division. Such person shall be given a copy of the conditions of release. Such conditions shall, where appropriate, include a requirement that the person comply with any restitution order previously imposed by a court of competent jurisdiction that applies to the person.

4. No person who has been granted conditional release shall be released until such person has served a minimum period of incarceration of ninety days, in accordance with subdivision two of section 70.40 of the penal law, and unless such person has agreed in writing to the conditions set by the commission. Such agreement shall state in plain, easily understandable language the consequences of a violation of one or more of the conditions of release.

5. Persons who have been granted conditional release by the commission established pursuant to this article shall, while on conditional release, be in the legal custody of the commission for a period of one year, or until returned to the custody of the local correctional facility located in the jurisdiction of the commission, as the case may be. The probation department located in the jurisdiction of the

commission has the duty of supervising the person during the period of such conditional release. The commission shall impose a minimum of four supervision contacts per month while the person is on conditional release, unless the commission determines that fewer contacts are appropriate in any individual case.

6. If conditional release is not granted, the commission shall inform the person in writing of the factors and reasons for such denial of conditional release within fifteen days of the decision. Such reasons shall be given in detail and not in conclusory terms. Incarcerated individuals denied conditional release are eligible to reapply sixty days after the date of the denial.

§ 274. Conditional release; procedures for violation, delinquency, warrants and revocation. 1. If at any time during the period of conditional release, the commission, or any member thereof, has reasonable cause to believe that a person who has been conditionally released has lapsed into criminal ways or company, or has violated one or more conditions of conditional release, the commission or such member may declare such person delinquent and issue a written declaration of delinquency. Upon such declaration, such commission or such member may issue a warrant for the retaking and temporary detention of such person.

2. A warrant issued pursuant to this section shall constitute sufficient authority to the chief administrative officer of any local correctional facility to whom it is delivered to hold in temporary detention the person named therein.

3. A warrant issued pursuant to this section may be executed by any probation officer or any officer authorized to serve criminal process or any peace officer, who is acting pursuant to his or her special duties, or any police officer. Any such officer to whom such warrant shall be delivered is authorized and required to execute such warrant by taking such person and having him or her detained as provided for in this section.

4. The alleged violator shall, within five days of the execution of the warrant, be given written notice of the time, place and purpose of the hearing. The notice shall state what conditions of conditional release are alleged to have been violated and in what manner and shall inform the alleged violator of his or her right to counsel as provided for in subdivision seven of this section.

5. The alleged conditional release violator shall appear before the commission within twenty days of the execution of the warrant. At the time of such appearance the commission shall ask the alleged violator whether he or she wishes to make any statement with respect to the violation. If the alleged violator makes a statement, the commission may accept it and base a decision thereon. If the commission does not accept it, or if the alleged violator does not make a statement, the commission shall proceed with the hearing.

6. The commission may receive any relevant evidence. The alleged violator may cross examine witnesses and may present evidence on his or her own behalf.

7. The alleged violator is entitled to counsel at all stages of any proceeding under this section and the commission shall advise him or her of such right upon delivering to the alleged violator written notice, required pursuant to subdivision four of this section.

8. At the conclusion of the hearing, the commission shall issue a finding. If the commission is not satisfied that there is a preponderance of evidence in support of the violation, the commission shall dismiss the violation, cancel delinquency and restore the person to supervision. If the commission is satisfied that there is a preponderance of evidence that the alleged violator violated one or more conditions of conditional release in an important respect, the commission shall so find.

9. Upon a finding in support of the violation, the commission may revoke the conditional release, or continue or modify the conditions of such conditional release. Where the commission revokes a person's

conditional release, such person shall be committed to the custody of the chief administrative officer of the local correctional facility to serve the time remaining on his or her sentence, in accordance with subdivision three of section 70.40 of the penal law. Where the commission modifies the conditions of the conditional release, the commission shall inform the person, in writing, of such modified conditions.

10. Any actions by the commission pursuant to this article shall be deemed a judicial function and shall not be reviewable if done in accordance with law.

* 11. The commission, or any member thereof, shall not determine that a person who has been conditionally released has lapsed into criminal ways or company, or has violated one or more conditions of conditional release because such person engages in bona fide work for an employer, including travel time to or from bona fide work, during curfew times set by conditions of conditional release. For purposes of this section, bona fide work is work performed as an employee for an employer, as defined in section two of the labor law.

* NB There are 2 sb 11's

* 11. The commission, or any member thereof, shall not determine that a person who has been conditionally released has lapsed into criminal ways or company, or has violated one or more conditions of conditional release because such person participated in work related labor protests, or in a lawful labor dispute, strike or other concerted stoppage of work or slowdown pursuant to article twenty of the labor law or the national labor relations act (29 U.S.C. sections 151 et. seq.).

* NB There are 2 sb 11's

§ 275. Transfer of custody and supervision of conditional releasee. 1. If a person who has been granted conditional release pursuant to this article resides or desires to reside in a place other than the one located within the jurisdiction of the commission which has legal custody of such person, such commission, or any member thereof, may designate any other commission established pursuant to this article, or the department, to assume custody of such person and may so transfer custody upon the consent of such other commission or the department.

2. Where custody of a person who has been granted conditional release pursuant to this article is transferred pursuant to subdivision one of this section, upon designation and prior to transfer, the commission making the designation shall notify the commission which has been designated to receive custody of such transfer or the department. The commission making the designation shall immediately forward its entire case record regarding such person to the receiving commission or the department. The commission to which legal custody has been transferred, or the department, shall assume the same powers and duties exercised by the designating commission and shall have the sole custody of such person.

3. The commission making the designation shall, upon designation and prior to transfer, notify the local probation department located in the jurisdiction of the receiving commission of the duties of supervision and conditions of release of such person. Upon such notification, such probation department shall assume responsibilities of supervision. The commission making the designation shall immediately forward its entire case record regarding such person to such probation department.

§ 276. Regulations and report. The division shall promulgate regulations in conformance with the provisions of this article which ensure that local conditional release commissions operate in accordance with the requirements provided in this article. The division shall report annually to the speaker of the assembly and to the temporary president of the senate concerning the operations of local conditional release commissions.

ARTICLE 12-B

RESIDENT PAROLE FACILITY FOR YOUTH

ARTICLE 13

CARE OF PROPERTY OF PERSON CONFINED FOR LIFE

§ 320. Who may apply for appointment of committee. When ever any person has been convicted and sentenced to imprisonment in this state for life, the husband, wife, relatives or next of kin or any creditor of such person may apply to the supreme court, at a special term thereof in the judicial district in which said person resided at the time of his conviction, for the appointment of a committee of such person's estate, both real and personal.

§ 321. Application for appointment of committee. Such application shall be made upon personal notice of not less than twenty days to such convicted person and to the district attorney of the county where the conviction was had, and upon notice to such other persons as would be entitled to notice of application for the probate of the will of such convicted person if he were then dead leaving a will of real and personal property, to be given in like manner as notice of application for such probate. The application shall, among other things, set forth the amount of the property of such person, and the names and residences of his heirs-at-law and next of kin, as near as the same are known or can be ascertained by the applicant. Upon such application and due proof of the service of the notice herein required, the court may, in its discretion, appoint a committee of the estate of such convicted person. The person or persons so appointed as such committee shall file a bond in the county clerk's office of such county, and in such amount and with such sureties as the said court shall direct. A copy of the order appointing such committee certified by the clerk of the county in which the order is filed, shall be filed in every county in which any real estate of such convicted person is situated.

§ 322. Payment of debts and application of property. The court shall direct the payment of the debts of such convicted person from said property, and may also in its discretion direct the application of the income, and if need be, of the principal of such property, to the support, education and maintenance of such persons as the said convicted person would be legally liable to support if he had not been so convicted. Or the court may direct the care and preservation of the income and principal of such estate until the natural death of the person so convicted.

§ 323. Sale of property. The court in the judicial district in which a person is sentenced to life imprisonment may empower, authorize and direct a committee of such person to sell any of the real or personal property of such person, and to do whatever may be deemed necessary in the management of any of such person's property in the manner prescribed for a committee of an incompetent. The court may from time to time, in the manner prescribed upon the sale of the property of an infant, if it deems it necessary, or that the estate will be benefited thereby, direct the sale of any of the real or personal property by said committee, and the investment of the proceeds of such sale. The court shall control such committees in the performance of their duties; and may from time to time modify and alter its direction or orders in any matter pertaining to an estate.

§ 324. Report of committee; compensation. The committee so appointed shall annually render an account to the court of his management and of his receipts and disbursements, and transmit a copy thereof to the person so convicted. The court may grant such compensation to the committee as it deems proper, not exceeding, however, the amount that may be allowed to an administrator.

§ 325. Proceedings on pardon or commutation of sentence. Should said convicted person be pardoned, or his sentence be commuted, the court shall direct the committee to transfer to him, after his discharge from prison, all of said property remaining in his hands not lawfully applied or used as herein provided for, and upon the death of such convicted person not pardoned or commuted as aforesaid, the court shall direct the distribution of such property as upon the natural death of a person not convicted.

ARTICLE 14

CARE OF PROPERTY OF PERSON CONFINED FOR LESS THAN LIFE

§ 350. When and to what court application to be made. Where a person is imprisoned in a state prison, for a term less than for life or in a penitentiary or county jail, for a criminal offense, for a longer term than one year; one or more trustees, to take charge of his property, may be appointed, as prescribed in this article, by the county court of the county, or the supreme court in the judicial district, where he resided at the time of his imprisonment, or if he was not then a resident of the state, where he is imprisoned.

§ 351. Who may apply. A petition for such an appointment may be presented by either of the following persons:

1. A creditor of the prisoner.

2. The prisoner's husband, wife, or child.

3. One or more of his next of kin, or, where he owns real property, of his heirs presumptive.

4. A relative whom he is bound to support.

5. Any relative or other person, in behalf of his infant child or children.

§ 352. Creditor must relinquish security. A creditor of the prisoner, who has a judgment, mortgage, or other security, specified in section fifty-nine of the debtor and creditor law, can not apply for such an appointment, with respect to the debt so secured, unless he appends to or includes in his petition, the declaration, required by that section from a consenting creditor; which declaration has the same effect as the declaration of a consenting creditor, as therein specified.

§ 353. Contents of petition. The petition must be in writing, and verified by the affidavit of the petitioner, to the effect, that the matters of fact therein stated are true, to the best of the petitioner's knowledge and belief. It must set forth the facts, showing that the applicant is entitled to make the application, and that the application is made to the proper court; the name and residence of each person, who is entitled to make such an application, as prescribed in the last section but one, except the fifth subdivision thereof; and a brief description of the property, real and personal, of the prisoner, and the value thereof. If the applicant is a creditor, and not a resident of the state, he must annex to his petition, the papers specified in section sixty-two of the debtor and creditor law. If any of the facts, herein required to be set forth can not be ascertained by the petitioner, after the exercise of due diligence, that fact must be stated; and the court may, in its discretion, issue a subpoena, requiring any person to attend and testify, respecting any matter, which, in its opinion, ought to be more fully and certainly set forth.

§ 354. Copy of sentence and affidavit to be presented. The petition must be accompanied with a copy of the sentence of conviction of the prisoner, duly certified by the clerk of the court by which he was sentenced, under the seal thereof; together with an affidavit of the applicant, stating that the person so convicted is actually imprisoned thereunder.

§ 355. Proceedings upon presentation of the papers. Upon the presentation of the papers, the court may, in its discretion, make an order, either appointing one or more fit persons trustees of the property of the prisoner; or requiring all creditors of the prisoner, and all persons interested in his estate, to show cause, at a time and place specified therein, why such an appointment should not be made. In the latter case, the order must direct the manner of service thereof, by publication or otherwise.

§ 356. Proceedings on return of order to show cause. Upon the return of an order to show cause, made as prescribed in the last section, proof of the service thereof, as required thereby, must first be made; whereupon the court must hear the allegations and proofs of the creditors, and other persons interested in the estate, who appear. Where the prisoner is indebted to any person, the court must appoint one or more trustees, unless the persons interested in the prisoner's property pay the debt, or give such security, as the court prescribes, for the payment thereof, either absolutely, or contingently upon a recovery in an action; in which case or where the prisoner is not indebted, the court may grant or deny the prayer of the petition, as justice requires.

§ 357. Effect of order appointing trustee. The entry of the order, appointing one or more trustees, and the filing of the papers upon which it was granted, vests in the trustee or trustees all the right, title and interest of the prisoner, in and to any property, real or personal. Where the prisoner owns real property, an exemplified copy of the order must be recorded, in the proper office for recording deeds, in each county where the real property is situated.

§ 358. Removal of trustee; appointment of new trustee. Upon the application of any person, entitled to apply for an order, appointing trustees of the prisoner's property, and upon such a notice as the court prescribes, to the petitioner, and to such other persons interested, as the court thinks proper to designate, the court, by which the order was granted, may, in its discretion, remove any trustee, and appoint another in his place; or may appoint one or more additional trustees. The new trustee or trustees, so appointed, have the same power and authority, are vested with the same right, title, and interest, and are subject to the same duties and liabilities, as if he or they had been appointed by the original order.

§ 359. Prisoner's property; how applied. After deducting their commissions and expenses, allowed by law, and paying the prisoner's debts, the trustees may, from time to time, under the direction of the court by which they were appointed, apply the surplus of any money in their hands, to the support of the prisoner's spouse and children, and of such other relatives as the prisoner is bound to support, and to the education of such prisoner's children.

§ 360. Prisoner's property to be delivered to him on his discharge. When the prisoner dies, or is lawfully discharged from imprisonment, the trustee or trustees must deliver over to him, or to his legal representatives, all his property, remaining in their hands, after deducting therefrom their lawful expenses and commissions.

§ 361. Application of this article to persons heretofore sentenced. This article applies to a prisoner who has been sentenced before this chapter takes effect, and to his property; except where one or more trustees of his property have been theretofore appointed, by proceedings taken in pursuance of a statute then in force.

ARTICLE 16

PROVISIONS RELATING TO MENTALLY ILL INCARCERATED INDIVIDUALS

§ 400. Definitions. As used in this article the following terms:

(1) "Examining physician" means a physician licensed to practice medicine in the state of New York, but who is not on the staff of the facility where the incarcerated individual is confined.

(2) "Hospital" means a hospital in the department of mental hygiene which is designated as such by the commissioner of mental hygiene for the care and treatment of mentally ill incarcerated individuals.

(3) "In immediate need of care and treatment" means that the incarcerated individual is apparently mentally ill and is not able to be properly cared for at the place where he or she is confined and is in need of immediate care and treatment in a hospital.

(4) "In need of care and treatment" means that a person has a mental illness for which in-patient care and treatment in a hospital is

necessary.

(5) "Incarcerated individual" means a person committed to the custody of the department of corrections and community supervision, or a person convicted of a crime and committed to the custody of the sheriff, the county jail, or a local department of correction.

(6) "Mental illness" means an affliction with a mental disease or mental condition which is manifested by a disorder or disturbance in behavior, feeling, thinking, or judgment to such an extent that the person afflicted requires care and treatment.

(7) "Superintendent" means a superintendent of a state correctional facility or the person in charge of a local correctional facility by whatever title he may be known.

§ 401. Establishment of programs inside correctional facilities. 1. The commissioner, in cooperation with the commissioner of mental health, shall establish programs, including but not limited to residential mental health treatment units, in such correctional facilities as he or she may deem appropriate for the treatment of mentally ill incarcerated individuals confined in state correctional facilities who are in need of psychiatric services but who do not require hospitalization for the treatment of mental illness. Incarcerated individuals with serious mental illness shall receive therapy and programming in settings that are appropriate to their clinical needs while maintaining the safety and security of the facility.

The conditions and services provided in the residential mental health treatment units shall be at least comparable to those in all residential rehabilitation units, and all residential mental health treatment units shall be in compliance with all provisions of paragraphs (i), (j), (k), and (l) of subdivision six of section one hundred thirty-seven of this chapter. Residential mental health treatment units that are either residential mental health unit models or behavioral health unit models shall also be in compliance with all provisions of paragraph (m) of subdivision six of section one hundred thirty-seven of this chapter.

The residential mental health treatment units shall also provide the additional mental health treatment, services, and programming delineated in this section. The administration and operation of programs established pursuant to this section shall be the joint responsibility of the commissioner of mental health and the commissioner. The professional mental health care personnel, and their administrative and support staff, for such programs shall be employees of the office of mental health. All other personnel shall be employees of the department.

2. (a) (i) In exceptional circumstances, a mental health clinician, or the highest ranking facility security supervisor in consultation with a mental health clinician who has interviewed the incarcerated individual, may determine that an incarcerated individual's access to out-of-cell therapeutic programming and/or mental health treatment in a residential mental health treatment unit presents an unacceptable risk to the safety of incarcerated individuals or staff. Such determination shall be documented in writing and such incarcerated individual may be removed to a residential rehabilitation unit that is not a residential mental health treatment unit where alternative mental health treatment and/or other therapeutic programming, as determined by a mental health clinician, shall be provided.

(ii) Any determination to restrict out-of-cell therapeutic programming and/or mental health treatment shall be reviewed at least every fourteen days by the joint case management committee or, if no such committee is available, by the treatment team assigned to the incarcerated individual's residential mental health treatment unit.

(iii) The determination whether to restrict out-of-cell therapeutic programming and/or mental health treatment shall take into account the incarcerated individual's mental condition and any safety and security concerns that would be posed by the incarcerated individual's access to such out-of-cell therapeutic programming. The joint case management committee or treatment team shall recommend that the incarcerated individual shall have access to out-of-cell therapeutic programming and/or mental health treatment unless in exceptional circumstances such access would pose an unacceptable risk to the safety of the incarcerated individual or other persons. Such recommendation shall be reviewed by the facility superintendent, and if the superintendent makes a determination not to accept such recommendation, the matter shall be referred to the joint central office review committee for resolution. Such resolution shall be made no later than twenty-one days after the imposition of the restriction.

(b) Incarcerated individuals in a residential mental health treatment unit shall receive property, services and privileges similar to incarcerated individuals confined in the general prison population, provided however, the department may impose general limitations on the quantity and type of property all incarcerated individuals on the unit are permitted to have in their cells and incarcerated individual access to programs that are more restrictive than for general population incarcerated individuals in order to maintain security and order on the unit. Further, in consultation with a mental health clinician, the department may make an individual determination to impose restrictions on property, services or privileges for an incarcerated individual on the unit for therapeutic and/or security reasons which are not inconsistent with the incarcerated individual's mental health needs. If any such restrictions on property, services or privileges are imposed on a particular incarcerated individual, they shall be documented in writing and shall be reviewed by the joint case management committee not less than every thirty days. A disciplinary sanction of restricted diet shall not be imposed on any incarcerated individual who is housed in a residential mental health treatment unit.

3. Misbehavior reports will not be issued to incarcerated individuals with serious mental illness for refusing treatment or medication, however, an incarcerated individual may be subject to the disciplinary process for refusing to go to the location where treatment is provided or medication is dispensed. In addition, there will be a presumption against imposition and pursuit of disciplinary charges for self-harming behavior and threats of self-harming behavior, including related charges for the same behaviors, such as destruction of state property, except in exceptional circumstances.

4. A disciplinary sanction imposed on an incarcerated individual requiring confinement to a cell or room shall continue to run while the incarcerated individual is placed in residential mental health treatment in a residential mental health unit model or a behavioral health unit

model. Such disciplinary sanction shall be reviewed by the joint case management committee or, if no such committee is available, by the treatment team assigned to the incarcerated individual's residential mental health treatment unit at least once every three months to determine whether based upon the incarcerated individual's mental health status and safety and security concerns, the incarcerated individual's disciplinary sanction should be reduced and/or the incarcerated individual should be transferred to a less restrictive setting. Nothing in this subdivision shall be deemed to preclude the department from granting reductions of disciplinary sanctions to incarcerated individuals in other residential mental health treatment unit models.

5. (a) An incarcerated individual in a residential mental health treatment unit shall not be sanctioned with segregated confinement for misconduct on the unit, or removed from the unit and placed in segregated confinement or a residential rehabilitation unit, except in exceptional circumstances where such incarcerated individual's conduct poses a significant and unreasonable risk to the safety of incarcerated individuals or staff, or to the security of the facility and he or she has been found to have committed an act or acts defined in subparagraph (ii) of paragraph (k) of subdivision six of section one hundred thirty-seven of this chapter. Further, in the event that such a sanction is imposed, an incarcerated individual shall not be required to begin serving such sanction until the reviews required by paragraph (b) of this subdivision have been completed; provided, however that in extraordinary circumstances where an incarcerated individual's conduct poses an immediate unacceptable threat to the safety of incarcerated individuals or staff, or to the security of the facility an incarcerated individual may be immediately moved to a residential rehabilitation unit. The determination that an immediate transfer to a residential rehabilitation unit is necessary shall be made by the highest ranking facility security supervisor in consultation with a mental health clinician.

(b) The joint case management committee shall review any disciplinary disposition imposing a sanction of segregated confinement at its next scheduled meeting. Such review shall take into account the incarcerated individual's mental condition and safety and security concerns. The joint case management committee may only thereafter recommend the removal of the incarcerated individual in exceptional circumstances where the incarcerated individual commits an act or acts defined in subparagraph (ii) of paragraph (k) of subdivision six of section one hundred thirty-seven of this chapter and poses a significant and unreasonable risk to the safety of incarcerated individuals or staff or to the security of the facility. In the event that the incarcerated individual was immediately moved to segregated confinement, the joint case management committee may recommend that the incarcerated individual continue to serve such sanction only in exceptional circumstances where the incarcerated individual commits an act or acts defined in subparagraph (ii) of paragraph (k) of subdivision six of section one hundred thirty-seven of this chapter and poses a significant and unreasonable risk to the safety of incarcerated individuals or staff or to the security of the facility. If a determination is made that the incarcerated individual shall not be required to serve all or any part of the segregated confinement sanction, the joint case management committee may instead recommend that a less restrictive sanction should be imposed. The recommendations made by the joint case management committee under this paragraph shall be documented in writing and referred to the superintendent for review and if the superintendent disagrees, the matter shall be referred to the joint central office review committee for a final determination. The administrative process described in this paragraph shall be completed within fourteen days. If the result of such process is that an incarcerated individual who was immediately transferred to a residential rehabilitation unit should be removed from such unit, such removal shall occur as soon as practicable, and in no event longer than seventy-two hours from the completion of the administrative process.

6. The department shall ensure that the curriculum for new correction officers, and other new department staff who will regularly work in programs providing mental health treatment for incarcerated individuals, shall include at least eight hours of training about the types and symptoms of mental illnesses, the goals of mental health treatment, the prevention of suicide and training in how to effectively and safely manage incarcerated individuals with mental illness. Such training may

be provided by the office of mental health or the justice center for the protection of people with special needs. All department staff who are transferring into a residential mental health treatment unit shall receive a minimum of eight additional hours of such training, and eight hours of annual training as long as they work in such a unit. All security, program services, mental health and medical staff with direct incarcerated individual contact shall receive training each year regarding identification of, and care for, incarcerated individuals with mental illnesses. The department shall provide additional training on these topics on an ongoing basis as it deems appropriate. All staff working in a residential mental health treatment unit shall also receive the training mandated in paragraph (n) of subdivision six of section one hundred thirty-seven of this chapter.

§ 401-a. Oversight responsibilities of the justice center for the protection of people with special needs. 1. The justice center for the protection of people with special needs shall be responsible for monitoring the quality of mental health care provided to incarcerated individuals pursuant to article twenty of the executive law. The justice center shall have direct and immediate access to all areas where state prisoners are housed, and to clinical and department records relating to incarcerated individuals' clinical conditions. The justice center shall maintain the confidentiality of all patient-specific information.

2. The justice center shall monitor the quality of care in residential mental health treatment programs and shall ensure compliance with paragraphs (d) and (e) of subdivision six of section one hundred thirty-seven of this chapter and section four hundred one of this article. The justice center may recommend to the department and the office of mental health that incarcerated individuals in segregated confinement pursuant to subdivision six of section one hundred thirty-seven of this chapter be evaluated for placement in a residential mental health treatment unit. It may also recommend ways to further the goal of diverting and removing incarcerated individuals with serious mental illness from segregated confinement to residential mental health treatment units. The justice center shall include in its annual report

to the governor and the legislature pursuant to section five hundred sixty of the executive law, a description of the state's progress in complying with this article, which shall be publicly available.

3. The justice center shall appoint an advisory committee on psychiatric correctional care ("committee"), which shall be composed of independent mental health experts and mental health advocates, and may include family members of former incarcerated individuals with serious mental illness. Such committee shall advise the justice center on its oversight responsibilities pursuant to this section. The committee may also make recommendations to the justice center regarding improvements to prison-based mental health care. Nothing in this subdivision shall be deemed to authorize members of the committee to have access to a correctional or mental hygiene facility or any part of such a facility. Provided, however, newly appointed members of the advisory committee shall be provided with a tour of a segregated confinement unit and a residential mental health treatment unit, as selected by the commissioner. Any such tour shall be arranged on a date and at a time selected by the commissioner and upon such terms and conditions as are within the sole discretion of the commissioner.

4. The justice center shall assess the department's compliance with the provisions of sections two, one hundred thirty-seven, and one hundred thirty-eight of this chapter relating to segregated confinement and residential rehabilitation units and shall issue a public report, no less than annually, with recommendations to the department and legislature, regarding all aspects of segregated confinement and residential rehabilitation units in state correctional facilities including but not limited to policies and practices concerning: (a) placement of persons in segregated confinement and residential rehabilitation units; (b) special populations; (c) length of time spent in such units; (d) hearings and procedures; (e) programs, treatment and conditions of confinement in such units; and (f) assessments and rehabilitation plans, procedures and discharge determinations.

§ 402. Commitment of incarcerated individuals with a mental illness.

1. Whenever the physician of any correctional facility, any county penitentiary, county jail or workhouse, any reformatory for women, or of any other correctional institution, shall report in writing to the superintendent that any person undergoing a sentence of imprisonment or adjudicated to be a youthful offender or juvenile delinquent confined therein has, in his or her opinion, a mental illness, such superintendent shall apply to a judge of the county court or justice of the supreme court in the county to cause an examination to be made of such person by two examining physicians. Such physicians shall be designated by the judge to whom the application is made. Each such physician, if satisfied, after a personal examination, that such incarcerated individual has a mental illness and in need of care and treatment, shall make a certificate to such effect. Before making such certificate, however, he or she shall consider alternative forms of care and treatment available during confinement in such correctional facility, penitentiary, jail, reformatory or correctional institution that might be adequate to provide for such incarcerated individual's needs without requiring hospitalization. If the examining physician knows that the person he or she is examining has been under prior treatment, he or she shall, insofar as possible, consult with the physician or psychologist furnishing such prior treatment prior to making his or her certificate.

2. In the city of New York, if the physician of a workhouse, city prison, jail, penitentiary or reformatory reports in writing to the superintendent of such institution that a prisoner confined therein, serving a sentence of imprisonment, in his or her opinion has a mental illness, the superintendent of said institution shall either transfer said prisoner to Bellevue or Kings county hospital for observation as to his or her mental condition by two examining physicians or shall secure two examining physicians to make such examination in his institution. Each such physician, if satisfied after a personal examination and observation that the prisoner has a mental illness and in need of care and treatment, shall make a certificate to such effect. Before making such certificate, however, he or she shall consider alternative forms of care and treatment available during confinement in such correctional facility, penitentiary, jail, reformatory or correctional institution

that might be adequate to provide for such incarcerated individual's needs without requiring hospitalization. If the examining physician knows that the person he or she is examining has been under prior treatment, he or she shall, insofar as possible, consult with the physician or psychologist furnishing such prior treatment prior to making his or her certificate.

3. Upon such certificates of the examining physicians being so made, it shall be delivered to the superintendent who shall thereupon apply by petition forthwith to a judge of the county court or justice of the supreme court in the county, annexing such certificate to his or her petition, for an order committing such incarcerated individual to a hospital for persons with a mental illness. Upon every such application for such an order of commitment, notice thereof in writing, of at least five days, together with a copy of the petition, shall be served personally upon the alleged person with a mental illness, and in addition thereto such notice and a copy of the petition shall be served upon either the wife, the husband, the father or mother or other nearest relative of such alleged person with a mental illness, if there be any such known relative within the state; and if not, such notice shall be served upon any known friend of such alleged person with a mental illness within the state. If there be no such known relative or friend within the state, the giving of such notice shall be dispensed with, but in such case the petition for the commitment shall recite the reasons why service of such notice on a relative or friend of the alleged person with a mental illness was dispensed with and, in such case, the order for commitment shall recite why service of such a notice on a relative or friend of the alleged person with a mental illness was dispensed with. Copies of the notice, the petition and the certificates of the examining physicians shall also be given the mental hygiene legal service. The mental hygiene legal service shall inform the incarcerated individual and, in proper cases, others interested in the incarcerated individual's welfare, of the procedures for placement in a hospital and of the incarcerated individual's right to have a hearing, to have judicial review with a right to a jury trial, to be represented by counsel and to seek an independent medical opinion. The mental hygiene legal service shall have personal access to such incarcerated individual

for such purposes.

4. The judge to whom such application for the commitment of the alleged person with a mental illness is made may, if no demand is made for a hearing on behalf of the alleged person with a mental illness, proceed forthwith on the return day of such notice to determine the question of mental illness and, if satisfied that the alleged person with a mental illness has a mental illness and in need of care and treatment, may immediately issue an order for the commitment of such alleged person with a mental illness to a hospital for a period not to exceed six months from the date of the order.

5. Upon the demand for a hearing by any relative or near friend on behalf of such alleged person with a mental illness, the judge shall, or he may upon his own motion where there is no demand for a hearing, issue an order directing the hearing of such application before him at a time not more than five days from the date of such order, which shall be served upon the parties interested in the application and upon such other persons as the judge, in his discretion, may name. Upon such day or upon such other day to which the proceedings shall be regularly adjourned, he shall hear the testimony introduced by the parties and shall examine the alleged person with a mental illness, if deemed advisable in or out of court, and render a decision in writing as to such person's mental illness and need for care and treatment. If such judge cannot hear the application, he may, in his order directing the hearing, name some referee who shall hear the testimony and report the same forthwith, with his opinion thereon, to such judge, who shall, if satisfied with such report, render his decision accordingly. If it be determined that such person has a mental illness and in need of care and treatment, the judge shall forthwith issue his order committing him to a hospital for a period not to exceed six months from the date of the order. Such superintendent shall thereupon cause such person with a mental illness to be delivered to the director of the appropriate hospital as designated by the commissioner of mental hygiene and such person with a mental illness shall be received into such hospital and retained there until he is determined to be no longer in need of care and treatment by the director of such hospital or legally discharged or

for the period specified in the order of commitment or in any subsequent order authorizing continued retention of such person in said hospital. Such superintendent, before delivering said person with a mental illness, shall see that he is bodily clean. If such judge shall refuse to issue an order of commitment, he shall certify in writing his reasons for such refusal.

6. When an order of commitment is made, such order and all papers in the proceeding shall be presented to the director of the appropriate hospital at the time when the person with a mental illness is delivered to such institution and a copy of the order and of each such paper shall be filed with the department of mental hygiene and also in the office of the county clerk of the county wherein the court is located which made the order of commitment. The judge shall order all such papers so filed in the county clerk's office to be sealed and exhibited only to parties to the proceedings, or someone properly interested, upon order of the court.

7. The costs necessarily incurred in determining the question of mental illness, including the fees of the medical examiners, shall be a charge upon the state or the municipality, as the case may be, at whose expense the institution is maintained, which has custody of the alleged person with a mental illness at the time of the application for his commitment to the hospital under the provisions of this section.

8. During the pendency of such proceeding the judge may forthwith commit such alleged person with a mental illness to a hospital for persons with a mental illness upon petition and the affidavit of two examining physicians that the superintendent is not able to properly care for such person at the institution where he is confined and that such person is in immediate need of care and treatment. Any person so committed shall be delivered to the director of the appropriate hospital as designated in the rules and regulations of the department of mental hygiene.

9. Except as provided in subdivision two of this section pertaining to prisoners confined in the city of New York, an incarcerated individual

of a correctional facility or a county jail may be admitted on an emergency basis to the Central New York Psychiatric Center upon the certification by two examining physicians, including physicians employed by the office of mental health and associated with the correctional facility in which such incarcerated individual is confined, that the incarcerated individual suffers from a mental illness which is likely to result in serious harm to himself, herself or others as defined in subdivision (a) of section 9.39 of the mental hygiene law. Any person so committed shall be delivered by the superintendent within a twenty-four hour period, to the director of the appropriate hospital as designated in the rules and regulations of the office of mental health. Upon delivery of such person to a hospital operated by the office of mental health, a proceeding under this section shall immediately be commenced.

10. If the director of a hospital for persons with a mental illness shall deem that the condition of such person with a mental illness requires his further retention in a hospital he shall, during the period of retention authorized by the last order of the court, apply to the supreme court or county court in the county where such hospital is located, for an order authorizing continued retention of such person with a mental illness. The procedures for obtaining any order pursuant to this subdivision shall be in accordance with the provisions of the mental hygiene law for the retention of involuntary patients.

11. If a person with a mental illness whose commitment, retention or continued retention has been authorized pursuant to this section, or any relative or friend in his behalf, be dissatisfied with any such order, he may, within thirty days after the making of any such order, obtain a rehearing and a review of the proceedings already had and of such order, upon a petition to a justice of the supreme court other than the judge or justice presiding over the court making such order. Such justice shall cause a jury to be summoned and shall try the question of the mental illness and the need for care and treatment of the person so committed or so authorized to be retained. Any such person with a mental illness or the person applying on his behalf for such review may waive the trial of the fact by a jury and consent in writing to trial of such fact by the court. No such petition for the hearing and review shall be

made by anyone other than the person so committed or authorized to be retained or the father, mother, husband, wife or child of such person, unless the petitioner shall have first obtained the leave of the court upon good cause shown. If the verdict of the jury, or the decision of the court when jury trial has been waived, be that such person does not have a mental illness, the justice shall order the removal of such person from the hospital and such person shall forthwith be transferred to a state correctional facility, or returned to the superintendent of the institution from which he was received if such institution was not a state correctional facility. Where the verdict of the jury, or the decision of the court where a jury trial has been waived, be that such person has a mental illness, the justice shall certify that fact and make an order authorizing continued retention under the original order. Proceedings under the order shall not be stayed pending an appeal therefrom, except upon an order of a justice of the supreme court, and made upon notice and after hearing, with provision made therein for such temporary care and confinement of the alleged person with a mental illness as may be deemed necessary.

12. The notice provided for herein shall be served by the sheriff of the counties of the state of New York, in which case the charges of such sheriff shall be a disbursement in such proceeding, or by registered mail on all persons required to be served, except that the superintendent of a correctional facility or the director of a hospital for persons with a mental illness, or their designees, shall be authorized to personally serve notice upon an alleged person with a mental illness or a person with a mental illness, as provided in this section.

13. Notwithstanding any provision of law to the contrary, when an incarcerated individual is being examined in anticipation of his or her conditional release, release to parole supervision, or when his or her sentence to a term of imprisonment expires, the provisions of subdivision one of section four hundred four of this article shall be applicable and such commitment shall be effectuated in accordance with the provisions of article nine or ten of the mental hygiene law, as appropriate.

§ 403. Department or superintendent to provide certain records. The department or superintendent shall furnish to the department of mental hygiene a copy of the health and psychiatric records and a sentence calculation for each incarcerated individual placed in a hospital. The sentence calculation shall include the maximum expiration date and tentative conditional release date and the parole eligibility or release consideration hearing date. Such records shall be furnished to the director of the hospital upon delivery of the incarcerated individual.

§ 404. Disposition of mentally ill incarcerated individuals upon release to parole, conditional release, or expiration of sentence. 1. Whenever an incarcerated individual committed to a hospital in the department of mental hygiene or whenever an incarcerated individual is examined in anticipation of his or her conditional release, release to parole supervision, or when his or her sentence to a term of imprisonment expires and such incarcerated individual shall continue to be mentally ill and in need of care and treatment at the time of his or her conditional release, release to parole supervision, or when his or her sentence to a term of imprisonment expires, the director of the hospital or the superintendent of a correctional facility may apply for the person's admission to a hospital for the care and treatment of the mentally ill in the department of mental hygiene pursuant to article nine of the mental hygiene law, or alternatively, the commissioner may apply for the person's admission to a secure treatment facility pursuant to article ten of the mental hygiene law.

2. The director may discharge any incarcerated individual at the expiration of the term for which he or she was sentenced who is still mentally ill, but who, in the opinion of the director, is reasonably safe to be at large. Such discharged incarcerated individual shall be entitled to suitable clothing adapted to the season in which he or she is discharged, and if it cannot be otherwise obtained, the business officer, or other officer having like duties shall, upon the order of the director, or of the commissioner of mental hygiene, as the case may

be, furnish the same, and money in an amount to be fixed by such commissioner with the approval of the director of the budget, to defray his or her expenses until he or she can reach his or her relatives or friends, or find employment to earn a subsistence.

3. Within a reasonable period prior to discharge of an incarcerated individual committed from a state correctional facility from a hospital in the department of mental hygiene to the community, the director shall ensure that a clinical assessment has been completed to determine whether the incarcerated individual meets the criteria for assisted outpatient treatment pursuant to subdivision (c) of section 9.60 of the mental hygiene law. If, as a result of such assessment, the director determines that the incarcerated individual meets such criteria, prior to discharge the director of the hospital shall either petition for a court order pursuant to section 9.60 of the mental hygiene law, or report in writing to the director of community services of the local governmental unit in which the incarcerated individual is expected to reside so that an investigation may be conducted pursuant to section 9.47 of the mental hygiene law.

4. Every incarcerated individual who has received mental health treatment pursuant to this article within three years of his or her anticipated release date from a state correctional facility shall be provided with mental health discharge planning and, when necessary, an appointment with a mental health professional in the community who can prescribe medications following discharge and sufficient mental health medications and prescriptions to bridge the period between discharge and such time as such mental health professional may assume care of the patient. Incarcerated individuals who have refused mental health treatment may also be provided mental health discharge planning and any necessary appointment with a mental health professional.

§ 405. Duty of the department to the director of a hospital. The department shall notify the director of a hospital in advance of hearings to be held at such hospital as may be necessary to carry out the duties of the board of parole or the department. The department shall assist the department of mental hygiene in establishing or continuing the operation of grievance procedures at such hospital. Where the subject matter of the grievance primarily involves a policy or practice of the department of mental hygiene, the commissioner shall transfer the review of the grievance to the commissioner of mental hygiene for resolution pursuant to subdivision three of section one hundred thirty-nine of the correction law.

ARTICLE 20

LOCAL CORRECTIONAL FACILITIES

§ 500. Application of article. The provisions of this article shall apply to all local correctional facilities as defined by subdivision sixteen of section two of this chapter.

§ 500-a. Use of jails. 1. Each county jail shall be used:

(a) For the detention of persons duly committed to secure their attendance as witnesses in any criminal case;

(b) For the detention of persons charged with crime, and committed for trial or examination;

(c) For the detention of persons awaiting the availability of a court, pursuant to the provisions of section 210.10, subdivision two of section 530.70 or subdivision two of section 410.40 of the criminal procedure law;

(d) For the confinement of persons duly committed for any contempt, or upon civil process;

(e) For the confinement of persons convicted of any offense and sentenced to imprisonment therein, or awaiting transportation under sentence to imprisonment in another county;

(f) For the confinement of persons during any proceedings pursuant to article ten of the mental hygiene law.

* (g) For the confinement of persons committed pursuant to an agreement authorized by section five hundred-o of this article.

* NB Repealed September 1, 2029

2. The Onondaga county jail may also be used for the detention of persons under arrest being held for arraignment.

2-a. Notwithstanding any other provision of law, the city council of the city of Elmira may enter into an agreement with the county of Chemung by which the county, through its facilities at the Chemung county jail, shall undertake to provide services pertaining to the confinement of individuals arrested or detained by police officers or other law enforcement officers within the city of Elmira who have been detained and are awaiting arraignment or initial court appearances.

2-b. The Erie county holding center and the Erie county correctional facility may also be used for the detention of persons under arrest being held for arraignment.

2-c. The Yates county jail may also be used for the detention of persons under arrest being held for arraignment in any court located in the county of Yates.

* 2-d. Notwithstanding any other law, rule or regulation to the contrary, the Cortland county jail may also be used for the detention of persons under arrest and being held for arraignment in any court located in the county of Cortland.

* NB There are 2 sb 2-d's

* 2-d. The Putnam county jail may also be used for the detention of persons under arrest being held for arraignment in any court located in the county of Putnam.

* NB There are 2 sb 2-d's

2-e. Notwithstanding any other provision of law, the city of Rochester may enter into an agreement with the county of Monroe by which the county, through its facilities at the Monroe county jail, shall undertake to provide services pertaining to the confinement of individuals arrested or detained by police officers or other law enforcement officers within the city of Rochester who have been detained and are awaiting arraignment or initial court appearances.

2-f. The Warren county jail may also be used for the detention of persons under arrest being held for arraignment in any court located in the county of Warren.

* 2-g. The Niagara county jail may also be used for the detention of persons under arrest being held for arraignment in any court located in the county of Niagara.

* NB There are 2 sb 2-g's

* 2-g. The Genesee county jail may also be used for the detention of persons under arrest being held for arraignment in any court located in the county of Genesee.

* NB There are 2 sb 2-g's

2-h. The Allegany county correctional facility may also be used for the detention of persons under arrest being held for arraignment in any court located in the county of Allegany.

2-i. The Seneca county correctional facility may also be used for the detention of persons under arrest being held for arraignment in any court located in the county of Seneca.

* 2-j. The Montgomery county correctional facility may also be used for the detention of persons under arrest being held for arraignment in any court located in the county of Montgomery.

* NB There are 2 sb 2-j's

* 2-j. The Chautauqua county correctional facility may also be used for the detention of persons under arrest being held for arraignment in any court located in the county of Chautauqua.

* NB There are 2 sb 2-j's

2-k. The Ontario county correctional facility may also be used for the detention of persons under arrest being held for arraignment in any court located in the county of Ontario.

2-l. The Albany county correctional facility may also be used for the detention of persons under arrest being held for arraignment in any court located in the county of Albany.

2-m. The Jefferson county correctional facility may also be used for the detention of persons under arrest being held for arraignment in any court located in the county of Jefferson.

* 2-n. The Livingston county correctional facility may also be used for the detention of persons under arrest being held for arraignment in any local court in the county of Livingston.

* NB There are 2 sb 2-n's

* 2-n. The Schenectady county correctional facility may also be used for the detention of persons under arrest being held for arraignment in any court located in the county of Schenectady.

* NB There are 2 sb 2-n's

* 2-o. The Washington county correctional facility may also be used for the detention of persons under arrest being held for arraignment in any court located in the county of Washington.

* NB There are 3 sb 2-o's

* 2-o. The Fulton county correctional facility may also be used for the detention of persons under arrest being held for arraignment in any court located in the county of Fulton.

* NB There are 3 sb 2-o's

* 2-o. The Orleans county jail may also be used for the detention of persons under arrest being held for arraignment in any court located in the county of Orleans.

* NB There are 3 sb 2-o's

2-p. The Essex county correctional facility may also be used for the detention of persons under arrest being held for arraignment in any court located in the county of Essex.

2-q. The Oneida county correctional facility may also be used for the detention of persons under arrest being held for arraignment in any court located in the county of Oneida.

2-r. The Otsego county jail may also be used for the detention of persons under arrest being held for arraignment in any court located in the county of Otsego.

* 2-s. The Steuben county correctional facility may also be used for the detention of persons under arrest being held for arraignment in any

court located in the county of Steuben.

* NB There are 4 sb 2-s's

* 2-s. The Wayne county correctional facility may also be used for the detention of persons under arrest being held for arraignment in any court located in the county of Wayne.

* NB There are 4 sb 2-s's

* 2-s. The Tioga county correctional facility may also be used for the detention of persons under arrest being held for arraignment in any court located in the county of Tioga.

* NB There are 4 sb 2-s's

* 2-s. The Broome county correctional facility may also be used for the detention of persons under arrest being held for arraignment in any court located in the county of Broome.

* NB There are 4 sb 2-s's

2-t. Notwithstanding any other provision of law, where the chief administrator of the courts establishes an off-hours arraignment part in a county in accordance with paragraph (w) of subdivision one of section two hundred twelve of the judiciary law, the county correctional facility may be used for the detention of persons who are eighteen years of age or older under arrest being held for arraignment in such part.

2-u. The Madison county correctional facility may also be used for the detention of individuals detained and imprisoned under the authority and jurisdiction of the Oneida Indian Nation court pursuant to a county-tribal detention agreement between the county of Madison, the Madison county sheriff and the Oneida Indian Nation pursuant to section eight hundred fifty-four of the county law.

2-v. The Oneida county correctional facility may also be used for the detention of individuals detained and imprisoned under the authority and jurisdiction of the Oneida Indian Nation court pursuant to a county-tribal detention agreement between the county of Oneida, the Oneida county sheriff and the Oneida Indian Nation pursuant to section eight hundred fifty-three of the county law.

3. The buildings, now used as jails of the counties of the state,

shall continue to be the jails of those counties respectively, until other buildings have been designated or erected for that purpose, according to law.

4. Notwithstanding any other provision of law, a county jail may be used for the electronic acquisition and transmission of fingerprint and other identification records pursuant to article one hundred sixty of the criminal procedure law.

*** § 500-b. Housing of prisoners and other persons in custody.** 1. As used in this section, the term "chief administrative officer" shall mean the person responsible pursuant to section five hundred-c of this article for receiving and safely keeping persons committed to a county jail.

2. In any case in which the chief administrative officer has more than one jail under his jurisdiction, he may confine a civil or criminal prisoner in any such jail and may remove the prisoner from one jail to another, within the county, whenever he deems it necessary for his safekeeping, or for the prisoner's appearance at court.

3. No female confined in a county jail shall be assigned to or housed in a facility housing unit with a male; and if detained on civil process, or for contempt, or as a witness, she shall not be put or kept in the same room with a man, except her husband.

4. No person under eighteen years of age shall be placed or kept or allowed to be at any time with any prisoner or prisoners eighteen years of age or older, in any room, dormitory, cell or tier of the buildings of such institution unless separately grouped to prevent access to persons under eighteen years of age by prisoners eighteen years of age or older.

6. The commission shall promulgate rules and regulations in accordance with subdivisions seven and eight of this section to assure that persons in custody in local correctional facilities will be afforded appropriate

precautions for their personal safety and welfare in assignment to housing.

7. (a) Consistent with the commission's rules and regulations regarding the assignment of incarcerated individuals to housing units, the chief administrative officer shall exercise good judgment and discretion and shall take all reasonable steps to ensure that the assignment of persons to facility housing units:

(1) fosters the safety, security and good order of the jail; and

(2) affords appropriate precautions for the personal safety and welfare of persons in custody with particular attention to those who are known to be vulnerable to assault or any physical or mental abuse.

(b) The chief administrative officer shall consider the following in complying with this subdivision:

(1) prior victimization in jail or prison;

(2) prior history of mental illness;

(3) prior history of sex offenses;

(4) prior history of a hostile relationship with another incarcerated individual;

(5) prior attempts at self-injury or suicide;

(6) prior attempted escapes;

(7) any mental or physical handicapping condition; and

(8) any other information concerning the safety or welfare of the incarcerated individual.

(c) In considering the above information, the chief administrative officer shall examine the following:

(1) records made available to such officer at the time of the commitment by the court or law enforcement agency;

(2) determinations made upon an interview with an incarcerated individual at the time of classification;

(3) records, to the extent relevant and known to the chief administrative officer, maintained by the department of corrections and community supervision and/or any local correctional facility in this state and which are accessible and available to the chief administrative officer; and

(4) any other relevant information brought to the attention of the chief administrative officer by any person with knowledge of the

conditions of the defendant.

8. Where the commission finds substantial noncompliance with commission rules and regulations with regard to (a) minimum staffing requirements; or (b) maximum jail capacity and security requirements; or (c) where it is determined that the county does not have an approved service plan in effect pursuant to article thirteen-A of the executive law or is found to be in non-compliance therewith, as provided in section two hundred sixty-three of such law, it shall prohibit the commingling of any of the following categories of incarcerated individuals:

(1) persons in custody on civil process, or committed for contempt, or detained as witnesses with persons detained for trial or examination upon a criminal charge with convicts under sentence;

(2) persons detained for trial or examination upon a criminal charge with convicts under sentence;

(3) persons under eighteen years of age with persons eighteen years of age or older; or

(4) a woman detained in any county jail or penitentiary upon a criminal charge or as a convict under sentence with a man; and if detained on civil process, or for contempt, or as a witness in a room in which there are no other prisoners with a man, except with her husband.

Such prohibition shall continue until such time as the commission finds that the county is no longer in substantial noncompliance with paragraphs (a), (b) and (c) of this subdivision.

Notwithstanding the provisions of this subdivision to the contrary, classification as authorized pursuant to this section may occur without compliance with paragraphs (b) and (c) of this subdivision for a period not to exceed six months immediately following the submission of a plan to the division pursuant to section two hundred sixty-two of the executive law. During such six month period the commission shall undertake to review, observe and assess the classification of incarcerated individuals in local correctional facilities as authorized under this section to thereby ascertain safeguards which should be incorporated in its rules and regulations. Further, during such six month period in which such classification shall be permitted pursuant to this subdivision, the commission shall evaluate whether a local correctional facility is in substantial noncompliance with rules and regulations regarding the requirements specified in paragraphs (a), (b) and (c) of this subdivision and shall determine at the end of such six month period whether substantial noncompliance exists. At the expiration of the six month period if the commission finds a local facility in substantial noncompliance, the commission shall order that the prohibition set forth in this subdivision immediately take effect. The commissioner shall advise the chief administrative officer of such facility of the specific nature of the noncompliance and the specific measures which should be undertaken to remedy the noncompliance. When such measures have been implemented, the chief administrative officer shall certify same to the commissioner and upon the verification thereof by the commissioner, shall permit the chief administrative officer to classify incarcerated individuals as provided under this section. In the event substantial noncompliance is not found at the expiration of the six month period, then the local correctional facility may continue to classify incarcerated individuals as authorized in this section.

9. The chief administrative officer shall forward to the commission a quarterly report relative to the housing of incarcerated individuals. The report shall include, but not be limited to:

(a) all unusual incidents or assaults occurring in a housing unit;

(b) staffing;

(c) daily prisoner population counts;

(d) verification that the locality is maintaining security and supervision records as mandated pursuant to the commission's rules and regulations;

(e) court orders which have been issued and which relate to staffing, jail capacity or security requirements; and

(f) any other information requested by the commission and available to the chief administrative officer with respect to this section.

10. The commission shall conduct on-site inspections and review reports required by this section to monitor the assignment of persons to facility housing units as governed by this section.

11. The commission shall submit to the governor, the temporary president of the senate, the speaker of the assembly, the chairman of the senate crime and correction committee and the chairman of the assembly committee on codes, by March first of each year, its evaluation and assessment of housing in county jails, together with any recommendations with respect to the proper operation or improvement of housing in county jails.

12. The provisions of this section shall govern only the assignment of persons to facility housing units and shall not be construed to prohibit the commingling of persons during their participation in any facility program or activity, including meals and visitations.

13. Where in the opinion of the chief administrative officer an emergency overcrowding condition exists in a local correctional facility caused in part by the prohibition against the commingling of persons under eighteen years of age with persons eighteen years of age or older or the commingling of persons eighteen years of age or older with persons under eighteen years of age, the chief administrative officer may apply to the commission for permission to commingle the aforementioned categories of incarcerated individuals for a period not to exceed thirty days as provided herein. The commission shall acknowledge to the chief administrative officer the receipt of such application upon its receipt. The chief administrative officer shall be permitted to commingle such incarcerated individuals upon acknowledgment of receipt of the application by the commission. The commission shall assess the application within seven days of receipt. The commission shall deny any such application and shall prohibit the continued commingling of such incarcerated individuals where it has found that the local correctional facility does not meet the criteria set forth in this subdivision and further is in substantial noncompliance with minimum staffing requirements as provided in commission rules and regulations. In addition, the commission shall determine whether the commingling of such incarcerated individuals presents a danger to the health, safety or welfare of any such incarcerated individual. If no such danger exists the chief administrative officer may continue the commingling until the

expiration of the aforementioned thirty day period or until such time as he or she determines that the overcrowding which necessitated the commingling no longer exists, whichever occurs first. In the event the commission determines that such danger exists, it shall immediately notify the chief administrative officer, and the commingling of such incarcerated individuals shall cease. Such notification shall include specific measures which should be undertaken by the chief administrative officer, to correct such dangers. The chief administrative officer may correct such dangers and reapply to the commission for permission to commingle; however, no commingling may take place until such time as the commission certifies that the facility is now in compliance with the measures set forth in the notification under this subdivision. When such certification has been received by the chief administrative officer, the commingling may continue for thirty days, less any time during which the chief administrative officer commingled such incarcerated individuals following his or her application to the commission, or until such time as he determines that the overcrowding which necessitated the commingling no longer exists, whichever occurs first. The chief administrative officer may apply for permission to commingle such incarcerated individuals for up to two additional thirty day periods, in conformity with the provisions and the requirements of this subdivision, in a given calendar year. For the period ending December thirtieth, nineteen hundred eighty-four, a locality may not apply for more than one thirty day commingling period.

* NB Repealed September 1, 2027

*** § 500-c. Custody and control of prisoners.** 1. Except as provided in subdivision two of this section, the sheriff of each county shall have custody of the county jail of such county.

2. In the counties within the city of New York, the city commissioner of correction shall have custody of the correctional facilities within the jurisdiction of the New York city department of correction. In the county of Westchester, the county commissioner of correction shall have custody of all county correctional facilities.

3. Whenever a person is committed to the custody of the sheriff, such commitment shall be deemed to be to the custody of the person designated in subdivisions one and two of this section hereinafter referred to as the chief administrative officer.

4. The chief administrative officer shall receive and safely keep in the county jail of his county each person lawfully committed to his custody pursuant to the provisions of sections five hundred-a and five hundred four of this article and any other applicable provisions of law. Such officer shall not be held personally liable for receiving or detaining any person under and in accordance with a commitment issued by a judicial officer; nor shall he, without lawful authority, let any such person out of jail.

5. All persons confined in a county jail or penitentiary shall, as far as practicable, be allowed to converse with their counsel, or religious advisor, under such reasonable regulations and restrictions as the chief administrative officer may fix. The chief administrative officer may prevent all other conversation by any prisoner in the jail when he shall deem it necessary and proper.

6. Notwithstanding any other provision of law, in the county of Onondaga all of the provisions of this section shall equally apply in any case where the sheriff is holding a person under arrest, for arraignment, prior to commitment, as if such person had been judicially committed to the custody of the sheriff and such person may be held in the Onondaga county jail.

7. A sheriff, the New York city commissioner of correction, or the Westchester county commissioner of correction, as the case may be, shall maintain an institutional fund account on behalf of every lawfully sentenced incarcerated individual or prisoner in his or her custody and shall for the benefit of the person make deposits into said accounts of any prisoner funds. As used in this section, the term "prisoner funds" means (i) funds in the possession of the prisoner at the time of admission into the institution; (ii) funds earned by a prisoner as provided in section one hundred eighty-seven of this chapter; and (iii)

any other funds received by or on behalf of the prisoner and deposited with such sheriff or municipal official in accordance with the written procedures established by the commission. Whenever the total value of unencumbered funds in a prisoner's account exceeds ten thousand dollars, such sheriff or official shall give written notice to the office of victim services.

8. A sheriff, the New York city commissioner of correction, or the Westchester county commissioner of correction, as the case may be, shall provide written notice to all incarcerated individuals serving a definite sentence for a specified crime defined in paragraph (e) of subdivision one of section six hundred thirty-two-a of the executive law who may be subject to any requirement to report to the office of victim services any funds of a convicted person as defined in section six hundred thirty-two-a of the executive law, the procedures for such reporting and any potential penalty for a failure to comply.

9. Notwithstanding any other provision of law, in the county of Erie all of the provisions of this section shall equally apply in any case where the sheriff is holding a person under arrest for arraignment, prior to commitment, as if such person had been judicially committed to the custody of the sheriff and such person may be held in the Erie county holding center or the Erie county correctional facility.

10. Notwithstanding any other provision of law, in the county of Yates all of the provisions of this section shall equally apply in any case where the sheriff is holding a person under arrest for arraignment, prior to commitment, as if such person had been judicially committed to the custody of the sheriff and such person may be held in the Yates county jail.

** 11. Notwithstanding any other provision of law, in the county of Cortland, all of the provisions of this section shall equally apply in any case where the sheriff is holding a person under arrest for arraignment, prior to commitment, as if such person had been judicially committed to the custody of the sheriff.

** NB There are 2 sb 11's

** 11. Notwithstanding any other provision of law, in the county of

Putnam, all of the provisions of this section shall equally apply in any case where the sheriff is holding a person under arrest for arraignment, prior to commitment, as if such person had been judicially committed to the custody of the sheriff and such person may be held in the Putnam county jail.

** NB There are 2 sb 11's

12. Notwithstanding any other provision of law, in the county of Warren all the provisions of this section shall equally apply in any case where the sheriff is holding a person under arrest for arraignment prior to commitment, as if such person had been judicially committed to the custody of the sheriff and such person may be held in the Warren county jail.

** 13. Notwithstanding any other provision of law, in the county of Niagara, all of the provisions of this section shall equally apply in any case where the sheriff is holding a person under arrest for arraignment, prior to commitment, as if such person had been judicially committed to the custody of the sheriff and such person may be held in the Niagara county jail.

** NB There are 2 sb 13's

** 13. Notwithstanding any other provision of law, in the county of Genesee all the provisions of this section shall equally apply in any case where the sheriff is holding a person under arrest for arraignment prior to commitment, as if such person had been judicially committed to the custody of the sheriff and such person may be held in the Genesee county jail.

** NB There are 2 sb 13's

14. Notwithstanding any other provision of law, in the county of Allegany all the provisions of this section shall equally apply in any case where the sheriff is holding a person under arrest for arraignment prior to commitment, as if such person had been judicially committed to the custody of the sheriff and such person may be held in the Allegany county correctional facility.

15. Notwithstanding any other provision of law, in the county of Seneca all the provisions of this section shall equally apply in any

case where the sheriff is holding a person under arrest for arraignment prior to commitment, as if such person had been judicially committed to the custody of the sheriff and such person may be held in the Seneca county correctional facility.

** 16. Notwithstanding any other provision of law, in the county of Montgomery all the provisions of this section shall equally apply in any case where the sheriff is holding a person under arrest for arraignment prior to commitment, as if such person had been judicially committed to the custody of the sheriff and such person may be held in the Montgomery county correctional facility.

** NB There are 2 sb 16's

** 16. Notwithstanding any other provision of law, in the county of Chautauqua all the provisions of this section shall equally apply in any case where the sheriff is holding a person under arrest for arraignment prior to commitment, as if such person has been judicially committed to the custody of the sheriff and such person may be held in the Chautauqua county correctional facility.

** NB There are 2 sb 16's

17. Notwithstanding any other provision of law, in the county of Ontario all the provisions of this section shall equally apply in any case where the sheriff is holding a person under arrest for arraignment prior to commitment, as if such person has been judicially committed to the custody of the sheriff and such person may be held in the Ontario county correctional facility.

18. Notwithstanding any other provision of law, in the county of Albany, all the provisions of this section shall equally apply in any case where the sheriff is holding a person under arrest for arraignment prior to commitment, as if such person has been judicially committed to the custody of the sheriff and such person may be held in the Albany county correctional facility.

19. Notwithstanding any other provision of law, in the county of Jefferson, all the provisions of this section shall equally apply in any case where the sheriff is holding a person under arrest for arraignment prior to commitment, as if such person has been judicially committed to

the custody of the sheriff and such person may be held in the Jefferson county correctional facility.

** 20. Notwithstanding any other provision of law, in the county of Livingston all provisions of this section shall equally apply in any case where the sheriff is holding a person under arrest for arraignment prior to commitment, as if such person had been judicially committed to the custody of the sheriff and such person may be held in the Livingston county correctional facility.

** NB There are 2 sb 20's

** 20. Notwithstanding any other provision of law, in the county of Schenectady all the provisions of this section shall equally apply in any case where the sheriff is holding a person under arrest for arraignment prior to commitment, as if such person had been judicially committed to the custody of the sheriff and such person may be held in the Schenectady county correctional facility.

** NB There are 2 sb 20's

** 21. Notwithstanding any other provision of law, in the county of Washington all the provisions of this section shall equally apply in any case where the sheriff is holding a person under arrest for arraignment prior to commitment, as if such person had been judicially committed to the custody of the sheriff and such person may be held in the Washington county correctional facility.

** NB There are 3 sb 21's

** 21. Notwithstanding any other provision of law, in the county of Fulton all the provisions of this section shall equally apply in any case where the sheriff is holding a person under arrest for arraignment prior to commitment, as if such person had been judicially committed to the custody of the sheriff and such person may be held in the Fulton county correctional facility.

** NB There are 3 sb 21's

** 21. Notwithstanding any other provision of law, in the county of Orleans all the provisions of this section shall equally apply in any case where the sheriff is holding a person under arrest for arraignment prior to commitment, as if such person had been judicially committed to the custody of the sheriff and such person may be held in the Orleans county jail.

** NB There are 3 sb 21's

22. Notwithstanding any other provision of law, in the county of Essex all the provisions of this section shall equally apply in any case where the sheriff is holding a person under arrest for arraignment prior to commitment, as if such person had been judicially committed to the custody of the sheriff and such person may be held in the Essex county correctional facility.

23. Notwithstanding any other provision of law, in the county of Oneida, all the provisions of this section shall equally apply in any case where the sheriff is holding a person under arrest for arraignment prior to commitment, as if such person has been judicially committed to the custody of the sheriff and such person may be held in the Oneida county correctional facility.

24. Notwithstanding any other provision of law, in the county of Otsego all the provisions of this section shall equally apply in any case where the sheriff is holding a person under arrest for arraignment prior to commitment, as if such person had been judicially committed to the custody of the sheriff and such person may be held in the Otsego county jail.

** 25. Notwithstanding any other provision of law, in the county of Steuben, all the provisions of this section shall equally apply in any case where the sheriff is holding a person under arrest for arraignment prior to commitment, as if such person has been judicially committed to the custody of the sheriff and such person may be held in the Steuben county correctional facility.

** NB There are 4 sb 25's

** 25. Notwithstanding any other provision of law, in the county of Wayne, all the provisions of this section shall equally apply in any case where the sheriff is holding a person under arrest for arraignment prior to commitment, as if such person had been judicially committed to the custody of the sheriff and such person may be held in the Wayne county correctional facility.

** NB There are 4 sb 25's

** 25. Notwithstanding any other provision of law, in the county of Tioga all the provisions of this section shall equally apply in any case where the sheriff is holding a person under arrest for arraignment prior to commitment, as if such person had been judicially committed to the custody of the sheriff and such person may be held in the Tioga county correctional facility.

** NB There are 4 sb 25's

** 25. Notwithstanding any other provision of law, in the county of Broome all the provisions of this section shall equally apply in any case where the sheriff is holding a person under arrest for arraignment prior to commitment, as if such person had been judicially committed to the custody of the sheriff and such person may be held in the Broome county correctional facility.

** NB There are 4 sb 25's

26. Notwithstanding any other provision of law, where the chief administrator of the courts establishes an off-hours arraignment part in a county in accordance with paragraph (w) of subdivision one of section two hundred twelve of the judiciary law, all the provisions of this section shall equally apply in any case where the sheriff is holding a person who is eighteen years of age or older and under arrest for arraignment prior to commitment, as if such person had been judicially committed to the custody of the sheriff and such person may be held in such county correctional facility.

27. Notwithstanding any other provision of law, in the county of Madison all the provisions of this section shall equally apply in any case where the sheriff is holding a person under the authority and jurisdiction of the Oneida Indian Nation court pursuant to a county-tribal detention agreement between the county of Madison, the Madison county sheriff and the Oneida Indian Nation pursuant to section eight hundred fifty-four of the county law, as if such person had been judicially committed to the custody of the sheriff and such person may be held in the Madison county correctional facility.

28. Notwithstanding any other provision of law, in the county of Oneida all the provisions of this section shall equally apply in any case where the sheriff is holding a person under the authority and jurisdiction of the Oneida Indian Nation court pursuant to a

county-tribal detention agreement between the county of Oneida, the Oneida county sheriff and the Oneida Indian Nation pursuant to section eight hundred fifty-three of the county law, as if such person had been judicially committed to the custody of the sheriff and such person may be held in the Oneida county correctional facility.

* NB Repealed September 1, 2027

§ 500-d. Food and labor. (1) Prisoners detained for trial, and those under sentence, shall be provided with a sufficient quantity of plain but wholesome food, at the expense of the county; such foods shall be purchased in the manner and subject to the regulations provided in section four hundred eight of the county law; but prisoners detained for trial may, at their own expense, and under the direction of the keeper, be supplied with any other proper articles of food.

(2) Such keeper shall cause each prisoner committed to his jail for imprisonment under sentence, to be constantly employed at hard labor when practicable, during every day, except Sunday but the Sunday exception shall not apply where a prisoner under sentence of intermittent imprisonment serves less than the five preceding days in the jail and the keeper has adopted an employment program designed especially for intermittent imprisonment, and the board of supervisors of the county, or judge of the county, may prescribe the kind of labor at which such prisoner shall be employed; and the keeper shall account, at least annually, with the board of supervisors of the county, for the proceeds of such labor.

(3) Such keeper may, with the consent of the board of supervisors of the county, or the county judge, from time to time, cause such of the convicts under his or her charge as are capable of hard labor, to be employed outside of the jail in the same, or in an adjoining county, upon such terms as may be agreed upon between the keepers and the officers, or persons, under whose direction such convicts shall be placed, subject to such regulations as the board or judge may prescribe; and the board of supervisors of the several counties are authorized to employ convicts under sentence to confinement in the county jails, in building and repairing penal institutions of the county and in building and repairing the highways in their respective counties or in preparing

the materials for such highways for sale to and for the use of the state, counties, towns, villages or cities, and in cutting wood and performing other work which is commonly carried on at a prison camp, and to make rules and regulations for their employment; and the said board of supervisors are hereby authorized to cause money to be raised by taxation for the purpose of furnishing materials and carrying this provision into effect; and the courts of this state are hereby authorized to sentence convicts committed to detention in the county jails to such hard labor as may be provided for them by the boards of supervisors. This section as amended shall not affect a county wholly included within a city. Notwithstanding any other provision of law, an incarcerated individual may be permitted to leave the institution under guard to voluntarily perform work for a nonprofit organization pursuant to this subdivision. As used in this section, the term "nonprofit organization" means an organization operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

§ 500-e. Reading matter; divine service. Each keeper shall provide a bible to be kept in each room of the jail in his charge, and he shall permit the persons therein confined to be supplied with other suitable and proper books and papers, and if practicable, he shall cause divine service to be conducted for the benefit of the prisoners, at least once each Sunday, if there shall be room in the prison that may be safely used for that purpose.

§ 500-f. Record of commitments and discharges. Each keeper shall keep a daily record, to be provided at the expense of the county, of the commitments and discharges of all prisoners delivered to his charge, which shall contain the date of entrance, name, offense, term of sentence, fine, age, sex, place of birth, color, social relations, education, secular and religious, for what and by whom committed, how and when discharged, trade or occupation, whether so employed when arrested, number of previous convictions. The daily record shall be a public record, and shall be kept permanently in the office of the keeper.

*** § 500-g. Commitment by United States courts.** The chief administrative officer shall receive and keep in his jail every person duly committed thereto, for any offense against the United States, by any court or officer of the United States, until he shall be duly discharged, the United States supporting such person during his confinement; provided such official shall not violate any of the provisions of section five hundred-b of this article in receiving or detaining such persons; and the provisions of this article relative to the mode of confining prisoners shall apply to all persons so committed by any court or officer of the United States.

* NB Effective until September 1, 2027

* § 500-g. Commitment by United States courts. Such keeper shall receive and keep in his jail every person duly committed thereto, for any offense against the United States, by any court or officer of the United States, until he shall be duly discharged; the United States supporting such person during his confinement; provided such keeper shall not violate any of the provisions of section five hundred-c of this article in receiving or detaining such persons; and the provisions of this article relative to the mode of confining prisoners and convicts, shall apply to all persons so committed by any court or officer of the United States.

* NB Effective September 1, 2027

§ 500-h. Payment of costs for medical and dental services. 1. Diagnoses, tests, studies or analyses for the diagnosis of a disease or disability, and care and treatment by a hospital, as defined in article twenty-eight of the public health law, or by a physician, or by a dentist to incarcerated individuals of a local correctional facility which are provided by a county or the city of New York shall be available without cost or charge to the incarcerated individuals receiving such examinations, care or treatment.

2. Notwithstanding the provisions of subdivision one of this section,

any county or the city of New York may, by local law, provide that such entity may be reimbursed for costs paid pursuant to subdivision one of this section from any third party coverage or indemnification carried by an incarcerated individual. Such third party coverage or indemnification shall first be applied against the total cost to the hospital or other provider as established in accordance with the provisions of section twenty-eight hundred seven of the public health law relating to rates of payment of an individual's care and treatment, as provided herein.

§ 500-i. County workhouses. The board of supervisors of any county may establish and maintain a workhouse for the confinement of persons convicted within the county of crimes and criminal offenses, the punishment for which is imprisonment in the county jail, and may provide for the imprisonment and employment therein of all persons sentenced thereto, and any court or judicial officer may sentence such person to such workhouse instead of to the county jail.

§ 500-j. Who may visit local correctional facilities. The following persons may visit at pleasure all local correctional facilities: The governor and lieutenant-governor, secretary of state, comptroller and attorney-general, members of the legislature, judges of the court of appeals, justices of the supreme court and county judges, district attorneys and every clergyman or minister, as such terms are defined in section two of the religious corporations law, having charge of a congregation in the county in which such facility is located. No other person not otherwise authorized by law shall be permitted to enter the rooms of a local correctional facility in which convicts are confined, unless under such regulations as the sheriff of the county, or in counties within the city of New York, the commissioner of correction of such city, or in the county of Westchester, the commissioner of correction of such county shall prescribe.

§ 500-k. Treatment of incarcerated individuals. 1. Subdivisions five and six of section one hundred thirty-seven of this chapter, except paragraphs (d) and (e) of subdivision six of such section, relating to the treatment of incarcerated individuals in state correctional facilities are applicable to incarcerated individuals confined in county jails; except that the report required by paragraph (f) of subdivision six of such section shall be made to a person designated to receive such report in the rules and regulations of the state commission of correction, or in any county or city where there is a department of correction, to the head of such department.

2. Notwithstanding any other section of law to the contrary, subdivision thirty-four of section two of this chapter, and subparagraphs (i), (iv) and (v) of paragraph (j) and subparagraph (ii) of paragraph (m) of subdivision six of section one hundred thirty-seven of this chapter shall not apply to local correctional facilities with a total combined capacity of five hundred incarcerated individuals or fewer.

§ 500-l. Release on holidays, Saturdays and Sundays. When the date of release from imprisonment in any county jail or jail farm, any city prison or workhouse, falls on Saturday or Sunday, it shall be deemed to fall on the preceding Friday. When the date of such release falls on a legal holiday it shall be deemed to fall on the preceding day, except that when such legal holiday falls on a Monday the date of release shall be deemed to fall on the preceding Friday. This section shall also apply to civil prisoners confined in any jail or prison. This section shall not apply to a sentence of intermittent imprisonment imposed pursuant to article eighty-five or paragraph (d) of subdivision two of section 60.01 of the penal law.

§ 500-m. Special provision relating to city of New York. Unless specifically provided by law to the contrary, within the city of New York or the counties constituting such city the term sheriff as set forth in this chapter shall be deemed to mean the commissioner of correction of such city.

*** § 500-n. Prisoners; unlawful fees prohibited.** 1. Except as otherwise provided by law, a sheriff or other person in charge of a correctional facility or any person employed at such facility shall not charge a prisoner or other person in custody with any sum of money, or demand or receive from him money or any valuable thing for any drink, food or other thing furnished or provided for such prisoner or person at any correctional facility.

2. A sheriff or other public officer or employee shall not demand or receive from a prisoner or other person, while in his custody, a gratuity or reward, upon any pretense or for any purpose.

3. A sheriff, or other public officer or employee, shall not demand or receive from a prisoner or other person in custody, money or any valuable thing for rent in a jail or any fee, compensation, or reward for the commitment, detaining in custody, release, or discharge of a prisoner, other than the fees expressly allowed therefor by law.

* NB Repealed September 1, 2027

*** § 500-o. Agreements for custody of incarcerated individuals from other states.** 1. The sheriff, warden, superintendent, local commissioner of correction or other person in charge of a local correctional facility may enter into an agreement with a correctional institution located in another state to provide for the custody in such local correctional facility in this state of persons sentenced to a period of imprisonment for an offense in such other state to a term in excess of ninety days but no more than one year. Any such agreement, except one that is made by the city of New York, shall be subject to the approval of the county legislature, the chief executive officer of the county and the commission. An agreement made by the city of New York shall be subject to the approval of the city council, the mayor and the commission.

2. Incarcerated individuals who are confined in a local correctional facility pursuant to an agreement under this section shall be dealt with in all respects in the same manner as incarcerated individuals committed

to the custody of a local correctional facility pursuant to paragraph (e) of subdivision one of section five hundred-a of this article. All rules and regulations promulgated by the commission regarding the treatment of incarcerated individuals confined in a local correctional facility shall be applicable to incarcerated individuals confined pursuant to this section. An incarcerated individual confined in a local correctional facility pursuant to an agreement under this section shall not be deprived of any legal rights which such incarcerated individual would have had if confined in a correctional institution in the jurisdiction in which he or she was convicted.

3. Nothing in this section shall be construed to allow persons duly committed and confined to a local correctional facility in this state to serve such confinement in another state.

4. Notwithstanding subdivision one of this section, the sheriff of Albany county may enter into an agreement with a correctional institution located in another state to provide for the custody in the Albany county correctional facility of persons sentenced to a period of imprisonment in such other state to a term in excess of ninety days but no more than two years, subject to the approval of the county legislature, the chief executive officer and the commission.

* NB Repealed September 1, 2029

§ 500-p. Prohibition on the custody of youth in Rikers Island facilities. Notwithstanding any other provision of law, no youth under the age of eighteen shall be placed or held in Rikers Island correctional facility or any facility located on Rikers Island located in the city of New York on or after April first, two thousand eighteen, to the extent practicable, but in no event after October first, two thousand eighteen and such youth shall be taken to and lodged in places certified by the office of children and family services in conjunction with the commission of correction and operated by the New York city administration for children's services in conjunction with the New York city department of corrections as a specialized juvenile detention facility for that purpose.

§ 500-q. Disclosure of video footage related to the death of incarcerated individuals involving correction officers or peace officers employed at a local correctional facility. 1. Definition. As used in this section, "video footage" shall include, but not be limited to, recordings from fixed or stationary cameras, body-worn cameras, handheld devices, or any other recording equipment maintained or used by correctional staff within a local correctional facility.

2. Duty to disclose. Any local correctional facility shall disclose to the attorney general's office of special investigation any video footage that such office deems to be related to the death of an incarcerated individual. This shall include any case in which the attorney general's office of special investigation determines the death involves a correction officer or peace officer employed at a local correctional facility.

3. Timeframe for disclosure. The chief administrative officer of the local correctional facility or chief administrative officer's designee shall make reasonable good faith efforts to ascertain the existence of and obtain any relevant video footage or audio recordings that existed or that may be related to the death and shall disclose such video footage or audio records within seventy-two hours of the occurrence of the death. If the chief administrative officer of the local correctional facility or chief administrative officer's designee subsequently learns of additional video footage or audio recordings which are related to the death, the chief administrative officer or the chief administrative officer's designee shall disclose such recordings within twenty-four hours of such discovery and provide the circumstances surrounding the discovery of such records to the attorney general's office of special investigations.

4. Redactions and exceptions. No redactions shall be made to the video footage before it is disclosed to the attorney general's office of special investigation.

§ 501. Jail physician. 1. The board of supervisors of each county, except New York, must appoint some reputable physician, duly authorized to practice medicine, as the physician to the jail of the county. If there is more than one jail they must appoint a physician to each. The physician to a jail holds his office at the pleasure of the board which appointed him, except in the county of Kings. In that county, the term of his office is three years.

2. Notwithstanding subdivision one of this section, a county board of supervisors may instead procure the services of a professional partnership, a professional service corporation, a professional service limited liability company or a registered limited liability company, duly authorized to practice medicine in the state, for the purpose of providing health services to the incarcerated individuals of the jail, provided that one physician from any such professional partnership, professional services corporation, professional service limited liability company or registered limited liability company shall be designated by the board to act as the chief medical officer of the jail.

§ 502. Use of liquor in jails. Spirituous, fermented or other liquor shall not be brought into a jail for the use of a person confined therein, except as authorized by federal statute and then only upon a written permit by the physician to the jail, which must be delivered to and kept by the keeper thereof, specifying the quantity and kind of liquor which may be furnished, the name of the civil prisoner for whom, and the time during which the same may be furnished.

§ 503. Permit to bring liquor into jail. A permit by a jail physician as specified in the last section shall not be granted, unless the physician is satisfied, that the liquor allowed to be furnished is necessary for the health of the civil prisoner, for whose use it is permitted and that fact must be stated in the permit.

§ 504. Designation of substitute jail. 1. (a) If there is no jail in a county, or the jail becomes unfit or unsafe for the confinement of some or all of the incarcerated individuals, civil or criminal, or is destroyed by fire or otherwise, or if a pestilential disease breaks out in the jail or in the vicinity of the jail and the physician to the jail certifies that it is likely to endanger the health of any or all of the incarcerated individuals in the jail, the state commission of correction, upon application, must, by an instrument in writing, filed with the clerk of the county, designate another suitable place within the county, or the jail of any other county, for the confinement of some or all of the incarcerated individuals, as the case requires. The place so designated thereupon becomes, to all intents and purposes, except as otherwise prescribed in this article, the jail of the county for which it has been so designated, and the purposes expressed in the instrument designating the same. The designation may be amended, modified or revoked by the state commission of correction by a subsequent instrument in writing filed with the clerk of the county.

(b) If transfer to the jail of another county would allow for an incarcerated individual's participation in beneficial programming, the state commission of correction, upon application and the consent of such incarcerated individual and any involved sheriff, may, by an instrument in writing, filed with the clerk of the county, designate the jail of such other county, for the confinement of such incarcerated individual, as the case requires. The jail so designated thereupon becomes, to all intents and purposes, except as otherwise prescribed in this article, the jail of the county for which it has been so designated, and the purposes expressed in the instrument designating the same. The designation may be amended, modified or revoked by the state commission of correction by a subsequent instrument in writing filed with the clerk of the county.

2. Where the jail in a county becomes unfit or unsafe for the confinement of some or all of the incarcerated individuals due to an incarcerated individual disturbance or other extraordinary circumstances, including but not limited to a natural disaster, unanticipated deficiencies in the structural integrity of a facility or the inability to provide one or more incarcerated individuals with

essential services such as medical care, upon the request of the municipal official as defined in subdivision four of section forty of this chapter and no other suitable place within the county nor the jail of any other county is immediately available to house some or all of the incarcerated individuals, the commissioner of corrections and community supervision may, in his or her sole discretion, make available, upon such terms and conditions as he or she may deem appropriate, all or any part of a state correctional institution for the confinement of some or all of such incarcerated individuals as an adjunct to the county jail for a period not to exceed thirty days. However, if the county jail remains unfit or unsafe for the confinement of some or all of such incarcerated individuals beyond thirty days, the state commission of correction, with the consent of the commissioner of corrections and community supervision, may extend the availability of a state correctional institution for one or more additional thirty day periods. The state commission of correction shall promulgate rules and regulations governing the temporary transfer of incarcerated individuals to state correctional institutions from county jails, including but not limited to provisions for confinement of such incarcerated individuals in the nearest correctional facility, to the maximum extent practicable, taking into account necessary security. The commissioner of corrections and community supervision may, in his or her sole discretion, based on standards promulgated by the department, determine whether a county shall reimburse the state for any or all of the actual costs of confinement as approved by the director of the division of the budget. On or before the expiration of each thirty day period, the state commission of correction must make an appropriate designation pursuant to subdivision one of this section if the county jail remains unfit or unsafe for the confinement of some or all of the incarcerated individuals and consent to the continued availability of a state correctional institution as required for herein. The superintendence, management and control of a state correctional institution or part thereof made available pursuant hereto and the incarcerated individuals housed therein shall be as directed by the commissioner of corrections and community supervision.

3. The county clerk must serve a copy of the designation, duly

certified by him or her, under his or her official seal, on the sheriff and keeper of the jail of the county designated. The sheriff of that county must, upon the delivery of the sheriff of the county for which the designation is made, receive into his or her jail, and there safely keep, all persons who may be lawfully confined therein, pursuant to this article; and he or she is responsible for their safekeeping, as if he or she was sheriff of the county for which the designation is made.

4. In any county where a jail is under the jurisdiction of a commissioner of correction the term sheriff as set forth in this section shall be deemed to mean the commissioner of correction of such county.

5. As provided in this section, any designation of the state commission of correction, or any amendment, modification or revocation thereto, may be issued by the commission, any member, or any attorney employed by the commission.

§ 505. Provision of routine medical, dental and mental health services and treatment. 1. Where an incarcerated individual who is not yet eighteen years of age has been committed to the custody of the sheriff or other person in charge of a local correctional facility and no medical consent has been obtained prior to commitment, the commitment order shall be deemed to grant to the minor the capacity to consent to routine medical, dental and mental health services and treatment to himself or herself.

2. Subject to the regulations of the department of health, routine medical, dental and mental health services and treatment is defined for the purposes of this section to mean any routine diagnosis or treatment, including without limitation the administration of medications or nutrition, the extraction of bodily fluids for analysis, and dental care performed with a local anesthetic. Routine mental health treatment shall not include psychiatric administration of medication unless it is part of an ongoing mental health plan or unless it is otherwise authorized by law.

3. (a) At any time prior to the date the incarcerated individual becomes eighteen years of age, the incarcerated individual's parent or legal guardian may institute legal proceedings pursuant to section 70.20 of the penal law objecting to the provision of routine medical, dental or mental health services and treatment being provided to the incarcerated individual.

(b) A notice of motion shall be served on the incarcerated individual and the sheriff or other person in charge of the local correctional facility not less than seven days prior to the return date of the motion. The person on whom the notice of motion is served shall answer the motion not less than two days before the return date. On examining the motion and answer and, in its discretion, after hearing argument, the court shall enter an order, granting or denying the motion.

4. Nothing in this section shall preclude an incarcerated individual from consenting on his or her own behalf to any medical, dental or mental health services and treatment where otherwise authorized by law to do so.

5. Corrections-based substance use disorder treatment and transition services. Local correctional facilities shall operate a substance use disorder treatment and transition services program pursuant to a plan approved by the commissioner of the office of addiction services and supports in accordance with section 19.18-c of the mental hygiene law.

§ 507. Removal of prisoners in case of fire. If, by reason of a jail, or a building near a jail, being on fire, there is reason to apprehend that some or all of the prisoners confined in the jail, may be injured, or may escape, the sheriff or keeper of the jail may, in his discretion, remove them to some safe and convenient place, and there confine them, until they can be safely returned to the jail or, if the jail is destroyed, or so injured, that it is unfit or unsafe for the confinement of the prisoners, until a designation is made, as prescribed in section five hundred and four of this article.

§ 508. Removal of sick prisoners from jail. 1. A sheriff, in his or her discretion, may by written order permit incarcerated individuals confined in a local correctional facility to receive medical diagnosis and treatment in outside hospitals, upon the determination that such outside treatment and diagnosis is necessary by reason of inadequate facilities within the local correctional facility. Such incarcerated individuals shall remain under the jurisdiction and in the custody of said sheriff while in a hospital, other than a secure facility, as such term is defined in paragraph b of subdivision two of this section, and said sheriff shall enforce proper measures in each case to safely maintain such jurisdiction and custody.

2. a. If a physician to a jail or in case of a vacancy a physician acting as such and the warden or jailer certify in writing that a prisoner confined in a jail, either in a civil cause or upon a criminal charge, is in such a state of mental health that he or she is in need of involuntary care and treatment and in their opinion should be removed to a psychiatric hospital for treatment, the warden or jailer shall immediately notify the director who shall have the responsibility for providing treatment for such prisoner. If such director after examination of the prisoner by an examining physician designated by him or her shall determine that such prisoner is in need of involuntary care and treatment, the director shall file an application for the involuntary hospitalization of such prisoner pursuant to article nine of the mental hygiene law in a hospital or secure facility, as defined in paragraph b of this subdivision, operated by the office of mental health or in the case of a prisoner confined in a jail in a city or county which maintains or operates a general hospital containing a psychiatric prison ward approved by the office of mental health to such prison ward for care and treatment or to any other psychiatric hospital if such prison ward is filled to capacity. Such application shall be supported by the certificate of two physicians in accordance with the requirements of section 9.27 of the mental hygiene law and thereupon such prisoner shall be admitted forthwith to the hospital or secure facility in which such application is filed, and the procedures of the mental hygiene law governing the hospitalization of such prisoner. The jailer or warden having custody of the prisoner shall deliver the prisoner to the

hospital or secure facility with which the director has filed the application. If such jailer or warden shall certify that such prisoner has a mental illness which is likely to result in serious harm to himself, herself or others and for which care in a psychiatric hospital is appropriate such jailer or warden shall effect the admission of such prisoner to a hospital or secure facility forthwith in accordance with the provisions of section 9.37 or 9.39 of the mental hygiene law and the hospital shall admit such prisoner. Upon admission of the prisoner, pursuant to section 9.37 or 9.39 of the mental hygiene law, the jailer or warden shall notify the director, the prisoner's attorney, and his or her family, where information about the family is available. While the prisoner is in the hospital, other than a secure facility, he or she shall remain in the custody under sufficient guard of the jailer or warden in charge of the jail from which he or she came. When the prisoner is in a secure facility, the jailer or warden may transfer custody of the incarcerated individual to the commissioner of mental health, pursuant to an agreement between such jailer or warden and such commissioner. A prisoner admitted to a psychiatric hospital pursuant to section 9.27, 9.37 or 9.39 of the mental hygiene law may be retained at the hospital or secure facility pursuant to the provisions of the mental hygiene law until he or she has improved sufficiently in his or her mental illness so that hospitalization is no longer necessary or until ordered by the court to be returned to the jail whichever comes first and in either event, the prisoner shall thereupon be returned to jail. The cost of the care and treatment of such prisoners in the hospital or secure facility shall be defrayed in accordance with the provisions of the mental hygiene law in such cases provided.

From the time of admission of a prisoner to a hospital under this section the retention of such prisoner for care and treatment shall be subject to the provisions for notice, hearing, review and judicial approval of continued retention or transfer and continued retention provided by article nine of the mental hygiene law for the admission and retention of involuntary patients.

b. As used in this section, the following terms shall have the following meanings:

(i) "Director" means (a) the director of a state hospital operated by the department of mental hygiene, or (b) the director of a hospital operated by any local government of the state that has been certified by the commissioner of mental hygiene as having adequate facilities to treat a person with a mental illness or (c) the director of community mental health services or the designees of any of the foregoing. The appropriate director to whom a jailer or warden shall certify the need for involuntary care and treatment and who shall have the responsibility for such care and treatment shall be determined in accordance with rules jointly adopted by the judicial conference and the commissioner of mental hygiene.

(ii) "Mental illness" shall mean an affliction with a mental disease or mental condition which is manifested by a disorder or a disturbance in behavior, feeling, thinking, or judgement to such an extent that the person afflicted requires care and treatment.

(iii) "In need of involuntary care and treatment" shall mean that a person has a mental illness for which care and treatment as a patient in a hospital is essential to such person's welfare and whose judgement is so impaired that he is unable to understand the need for such care and treatment.

(iv) "Likelihood to result in serious harm" shall mean (1) substantial risk of physical harm to himself as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that he is dangerous to himself or (2) a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear or serious physical harm.

(v) "Secure facility" shall mean a facility operated or licensed by the office of mental health that has been approved and designated by the commissioner of mental health to receive and retain prisoners pursuant to this section, based upon a determination by such commissioner that the physical and internal security of the facility are sufficient to protect the safety and security of staff and persons served by the facility.

c. If at any time the hospital in which a prisoner is hospitalized pursuant to this subdivision determines that the prisoner is not in such state of mental health to be in need of involuntary care and treatment the prisoner shall be returned to the jail forthwith.

d. If at any time the director of a hospital in which a prisoner is hospitalized pursuant to this subdivision has reason to believe that the prisoner may be an incapacitated defendant as defined in article seven hundred thirty of the criminal procedure law he shall so notify the court in which the criminal charges are pending and such court shall thereupon issue an examination order pursuant to the provisions of article seven hundred thirty of the criminal procedure law.

e. Nothing in this subdivision shall prevent the release of the prisoner from custody where appropriate by recognizance, bail, or otherwise as the court may direct.

§ 509. Absence of incarcerated individual for funeral and deathbed visits. The sheriff of a local correctional facility or his or her designee may permit any incarcerated individual confined in his or her local correctional facility to attend the funeral of his or her father, mother, guardian or former guardian, child, brother, sister, husband, wife, grandparent, grandchild, ancestral uncle or ancestral aunt within the state, or to visit such individual during his or her illness if death be imminent; but the exercise of such power shall be subject to such rules and regulations as the commission shall prescribe, respecting the granting of such permission, duration of absence from the institution, custody, transportation and care of the incarcerated individual, and guarding against escape.

§ 510. Voting upon release. 1. Prior to the release from a local correctional facility of any person convicted of a felony the chief administrative officer shall notify such person verbally and in writing that his or her voting rights will be restored upon release and provide such person with a form of application for voter registration and a declination form, offer such person assistance in filling out the appropriate form, and provide such person written information distributed by the board of elections on the importance and the mechanics of voting. Upon release, such person may choose to either submit his or her completed application to the state board or county board where such person resides or have the department transmit it on his or her behalf. Where such person chooses to have the department transmit the application, the chief administrative officer shall transmit the completed application upon such person's release to the state board or county board where such person resides.

2. Upon discharge or release from the custody of a local correctional facility, the chief administrative officer of such facility shall, in consultation with the county board of elections, distribute to every person eighteen years of age or older a written notice on the voting rights of such person in the state of New York, including information on the importance and mechanics of voting, when such person is or may become eligible to vote, and offer to every such person a voter registration form; provided that, if an individual declines to accept a voter registration form, the chief administrative officer shall maintain a written record of such declination. Notice is not required for those individuals being transferred to a different local correctional facility, individuals being transferred or released to the custody of a state correctional facility or institution, or individuals being released to the custody of a hospital or mental health institution for treatment.

§ 514. Confinement of civil prisoner. A civil prisoner, committed to jail upon process for contempt, or committed for misconduct in a case prescribed by law, must be actually confined and detained within the jail, until he is discharged by due course of law, or is removed to another jail or place of confinement, in a case prescribed by law. A sheriff or keeper of a jail, who suffers such a prisoner to go or be at large out of his jail; except by virtue of a writ of habeas corpus, or by the special direction of the court committing him, or in a case specially prescribed by law; is liable to the party aggrieved, for his damages sustained thereby, and is guilty of a misdemeanor. If the commitment was for the nonpayment of a sum of money, the amount thereof, with interest, is the measure of damages.

§ 523. Revocation of designation of jail. When a jail is erected for the county, for whose use the designation pursuant to section five hundred and four of this chapter was made, or its jail is rendered fit and safe for the confinement of prisoners, or the reason for the designation of another jail or place has otherwise ceased to be operative, the designation must be revoked, as prescribed in this article and section five hundred and five of this chapter.

§ 524. Manner and effect of revocation. The county clerk must immediately serve a copy of the revocation, duly certified by him under his official seal, upon the sheriff of the same county; who must remove the civil and criminal prisoners belonging to his custody, and confined without his county, to his proper jail. If a prisoner has been admitted to the jail liberties in the other county, he must also be removed; and he is entitled to the liberties of the jail of the county, to which he is removed, without a new bond, as if he had been originally admitted to the jail liberties in that county; and the bond given by him applies accordingly to those liberties.

§ 529. Term of imprisonment of a recaptured prisoner. A prisoner arrested or committed in a civil action or proceeding, who escapes from custody, upon his voluntary return or recapture, shall be imprisoned for a term equal to that portion of his original term of imprisonment which remains unexpired at the time of his escape.

ARTICLE 22

MISCELLANEOUS PROVISIONS

§ 600. Certain correctional officers to administer oaths. The commissioner of correction and the deputy and assistant commissioners of correction may administer oaths and take affidavits in all matters relating to the affairs of the state prisons. The warden, principal keeper, chief clerk, of each prison are authorized and required to take affidavits, in all matters of accounts against their respective prisons, and also in relation to fees of sheriffs in bringing prisoners to any of said prisons.

§ 600-a. Jail time records and certificates. A record shall be kept by the sheriff, or in counties within the city of New York by the commissioner of correction of such city, of all jail time to which the defendant is entitled under subdivision three of section 70.30 of the penal law. In any case where the sheriff or the commissioner of correction of the city of New York has the duty of delivering a defendant to an institution not under his jurisdiction pursuant to sentence and commitment, such person shall deliver a certified transcript of such record to the person to whom the defendant is to be delivered.

§ 601. Delivery of commitment with incarcerated individual; payment of fees for transportation. * (a) Whenever an incarcerated individual shall be delivered to the superintendent of a state correctional facility pursuant to an indeterminate or determinate sentence, the officer so delivering such incarcerated individual shall deliver to such superintendent, the sentence and commitment or certificate of conviction, or a certified copy thereof, and a copy of any order of protection pursuant to section 380.65 of the criminal procedure law received by such officer from the clerk of the court by which such incarcerated individual shall have been sentenced, a copy of the report of the probation officer's investigation and report or a detailed statement covering the facts relative to the crime and previous history certified by the district attorney, a copy of the incarcerated individual's fingerprint records, a detailed summary of available medical records, psychiatric records and reports relating to assaults, or other violent acts, attempts at suicide or escape by the incarcerated individual while in the custody of the local correctional facility; any such medical or psychiatric records in the possession of a health care provider other than the local correctional facility shall be summarized in detail and forwarded by such health care provider to the medical director of the appropriate state correctional facility upon request; the superintendent shall present to such officer a certificate of the delivery of such incarcerated individual, and the fees of such officer for transporting such incarcerated individual shall be paid from the treasury upon the audit and warrant of the comptroller. The sentence and commitment or certificate of conviction shall be deemed to grant authorization to the department of corrections and community supervision to request a certified copy or certified transcript of birth on behalf of an incarcerated individual, when such request is made pursuant to subdivision four of section four thousand one hundred seventy-four of the public health law or section four thousand one hundred seventy-nine of such law. Whenever an incarcerated individual of the state is delivered to a local facility, the superintendent shall forward summaries of such records to the local facility with the incarcerated individual. The department of corrections and community supervision shall notify the incarcerated individual when a birth certificate has been ordered and received. Upon such individual's release from a correctional facility, the certified copy or certified transcript of birth shall be provided to the individual.

* NB Effective until September 1, 2027

* (a) Whenever an incarcerated individual shall be delivered to the superintendent of a state correctional facility pursuant to an indeterminate or determinate sentence, the officer so delivering such incarcerated individual shall deliver to such superintendent, the sentence and commitment or certificate of conviction, or a certified copy thereof, and a copy of any order of protection pursuant to section 380.65 of the criminal procedure law received by such officer from the clerk of the court by which such incarcerated individual shall have been sentenced, a copy of the report of the probation officer's investigation and report or a detailed statement covering the facts relative to the crime and previous history certified by the district attorney, a copy of the incarcerated individual's fingerprint records, a detailed summary of

available medical records, psychiatric records and reports relating to assaults, or other violent acts, attempts at suicide or escape by the incarcerated individual while in the custody of the local correctional facility; any such medical or psychiatric records in the possession of a health care provider other than the local correctional facility shall be summarized in detail and forwarded by such health care provider to the medical director of the appropriate state correctional facility upon request; the superintendent shall present to such officer a certificate of the delivery of such incarcerated individual, and the fees of such officer for transporting such incarcerated individual shall be paid from the treasury upon the audit and warrant of the comptroller. Whenever an incarcerated individual of the state is delivered to a local facility, the superintendent shall forward summaries of such records to the local facility with the incarcerated individual.

* NB Effective September 1, 2027

* (b) Whenever an incarcerated individual is sentenced by a court of this state to an indeterminate sentence, but the incarcerated individual is immediately returned to a correctional facility under the jurisdiction of the United States or of a sister state, the clerk of the court shall immediately send to the commissioner of the department a certified copy of the sentence, a copy of the probation report and a copy of the fingerprint records of the incarcerated individual.

* NB Effective until September 1, 2027

* (b) Whenever an incarcerated individual is sentenced by a court of this state to an indeterminate or determinate sentence, but the incarcerated individual is immediately returned to a correctional facility under the jurisdiction of the United States or of a sister state, the clerk of the court shall immediately send to the commissioner of the department a certified copy of the sentence, a copy of the probation report and a copy of the fingerprint records of the incarcerated individual.

* NB Effective September 1, 2027

(c) In order to comply with section five hundred-b of this chapter, to afford appropriate precautions for the personal safety and welfare of persons in custody, and to foster the safety, security and good order of the local correctional facility, a sheriff upon the lawful commitment of a person to his custody may request, and a sheriff to whom such request is made shall deliver, such information in his possession or summaries thereof as specified in subdivision (a) of this section with the exception of medical and psychiatric records which would be forwarded pursuant to subdivision (d) of this section.

(d) Any medical or psychiatric records in the possession of a health care provider shall be summarized in detail and forwarded by such health care provider to the medical director of the receiving local correctional facility upon the request of such sheriff or medical director. Requests for such information shall be made when the information is necessary for the timely and effective medical evaluation or treatment.

(e) A copy of any order of protection issued by any court against such incarcerated individual pursuant to article five hundred thirty of the criminal procedure law or article eight of the family court act at the time of sentencing or which thereafter be issued shall accompany any commitment.

(f) Information, however received, pursuant to subdivisions (c) and (d) of this section which is confidential as required by law shall be kept confidential by the party receiving such information and any limitation on the release of such information imposed by law upon the party furnishing the information shall also apply to the party receiving such information. Any disclosure of confidential material made pursuant to this section shall be limited to that information which is necessary in light of the reason for disclosure.

(g) The state commission of correction shall promulgate a rule and regulation which prescribes the manner in which confidential material shall be transmitted between local correctional facilities.

§ 601-a. Return of persons erroneously sentenced for the purpose of resentence. Whenever it shall appear to the satisfaction of the department based on facts submitted on behalf of a person sentenced and confined in a state prison, that any such person has been erroneously sentenced, it shall be the duty of the department to communicate with the sentencing court, the incarcerated individual's defense attorney and the district attorney of the county in which such person was convicted. If upon investigation, the sentencing court, the defense attorney or the district attorney believes that the person has been so erroneously sentenced, the sentencing court, or the district attorney acting at the direction of the sentencing court, shall notify the department and arrange for the person to be heard and properly resentenced. The department thereupon shall comply with any court order to produce such person from such prison and cause him or her to be taken before the court in which he or she was sentenced for the purpose of resentence. The cost and expense of the return of such person necessarily incurred shall be a charge against the county from which he or she was committed.

§ 601-b. Coram nobis prisoners; reimbursement for costs. Whenever a prisoner is transferred from a state penal institution to a county jail or penitentiary, or a city prison operated by a city having a population of one million or more inhabitants, to await judicial review of his trial, the state shall pay to the city or county operating such facility the actual per day per capita cost, certified to the commissioner by the appropriate local official, for the care of such prisoner but, in any case, the reimbursement rate shall not exceed twenty dollars per day per capita.

§ 601-c. Felony prisoners; reimbursement for costs. Notwithstanding any other provision of law, in any case where a person has been convicted of a felony and a sentence has been pronounced which requires that he or she be committed to the custody of the commissioner, if such person has not been accepted for custody by the commissioner within ten business days of receipt of a written notification by the department from the appropriate local official that he or she is prepared to transport such person to the facility designated by the department, provided that there has been compliance with subdivision (a) of section six hundred one of this article, and provided further that such person is not in need of immediate medical care requiring the availability of a hospital or infirmary bed, then the expense of maintaining such person shall be paid by the state at the rate of one hundred dollars per day per capita, or the actual per day per capita cost as certified by the appropriate local official, whichever is less, beginning with the first day of receipt of written notification by the department.

§ 601-d. Post-release supervision; certain cases. This section shall apply only to incarcerated individuals in the custody of the commissioner, and releasees under the supervision of the department, upon whom a determinate sentence was imposed between September first, nineteen hundred ninety-eight, and the effective date of this section, which was required by law to include a term of post-release supervision:

1. For purposes of this section, such a person shall be deemed a "designated person" if the commitment order that accompanied such person does not indicate imposition of any term of post-release supervision; provided, however, that if such agency with custody of or supervision over such person has the sentencing minutes that show that a term of post-release supervision was actually pronounced at sentence, such person shall not be deemed a designated person.

2. Whenever it shall appear to the satisfaction of the department that an incarcerated individual in its custody or that a releasee under its supervision, is a designated person, the department shall make notification of that fact to the court that sentenced such person, and to the incarcerated individual or releasee.

3. If a sentencing court that has received such notice, after reviewing the sentencing minutes, if available, is or becomes aware that a term of post-release supervision was in fact pronounced at the prior sentencing of such person, it shall issue a superseding commitment order reflecting that fact, accompanied by a written explanation of the basis for that conclusion, and send such order and explanation to the department, to the defendant, and to the attorney who appeared for the defendant in connection with the judgment or sentence or, if the defendant is currently represented concerning his or her conviction or sentence or with respect to an appeal from his or her sentence, such present counsel.

4. (a) If the sentencing court shall not have issued a superseding

commitment order, reflecting imposition of a term of post-release supervision, within ten days after receiving notice pursuant to subdivision two of this section, then the sentencing court shall appoint counsel pursuant to section seven hundred twenty-two of the county law, provide a copy of the notice pursuant to subdivision two of this section to such counsel, and calendar such person for a court appearance which shall occur no later than twenty days after receipt of said notice. At such court appearance, the court shall furnish a copy of such notice and the proceeding date pursuant to paragraph (c) of this subdivision to the district attorney, the designated person, assigned counsel and the department.

(b) The court shall promptly seek to obtain sentencing minutes, plea minutes and any other records and shall provide copies to the parties and conduct any reconstruction proceedings that may be necessary to determine whether to resentence such person.

(c) The court shall commence a proceeding to consider resentence no later than thirty days after receiving notice pursuant to subdivision two of this section.

(d) The court shall, no later than forty days after receipt of such notice, issue and enter a written determination and order, copies of which shall be immediately provided to the district attorney, the designated person, his or her counsel and the department along with any sentencing minutes pursuant to section 380.70 of the criminal procedure law.

(e) The designated person may, with counsel, knowingly consent to extend the time periods specified in paragraphs (c) and (d) of this subdivision. The people may apply to the court for an extension of ten days on the basis of extraordinary circumstances that preclude final resolution within such period of the question of whether the defendant will be resentenced. The department shall be notified by the court of any such extension.

5. The court shall promptly notify the agency that referred a designated person whenever it (a) resentences the defendant to a sentence that includes a term of post-release supervision; or (b) determines that it will not resentence the defendant under this section or otherwise. Upon the conclusion of the proceeding, the court shall

furnish the parties and the agency that referred the designated person with an accurate copy of the current order of commitment for the person.

6. In any case in which the department notifies the court of a designated person, and has not been informed that the court has made a determination in accordance with paragraph (d) of subdivision four of this section (unless extended pursuant to paragraph (e) of such subdivision), the department may notify the court that it has not received a determination and, in any event, shall adjust its records with respect to post-release supervision noting that the court has not, in accordance with subdivision four of this section, imposed a sentence of post-release supervision.

7. When the department complies with this section as to a person confined in state prison, it need not separately follow the procedures set forth in section six hundred one-a of this article.

8. Nothing in this section shall affect the power of any court to hear, consider and decide any petition, motion or proceeding pursuant to article four hundred forty of the criminal procedure law, article seventy or seventy-eight of the civil practice law and rules, or any authorized proceeding.

§ 602. Expenses of sheriff for transporting prisoners. For conveying a prisoner or prisoners to a state prison from the county prison, the sheriff or person having charge of the same shall be reimbursed for the amount of expenses actually and necessarily incurred by him for railroad fare or cost of other transportation and for cost of maintenance of himself and each prisoner in going to the prison, and for his railroad fare or other cost of transportation in returning home, and cost of his maintenance while so returning. The county shall be reimbursed for a portion of the salary of such sheriff or person for the period, not to exceed thirty-six hours, from the commencement of transportation from the county prison to the return of such sheriff or person to the county prison, the amount of such reimbursement to be computed by adding to the amount of such salary the total amount of the aforesaid expenses incurred for transportation and maintenance and reducing the resulting aggregate amount, first, by fifty per centum of such aggregate amount and, second, by the total amount of the aforesaid expenses incurred for transportation and maintenance.

§ 603. Rendering accounts for conveying of prisoners. On the conveying of any such prisoners to the warden of such prison and upon returning home, the sheriff or other person having charge of the same, shall make and render to the warden of the prison, an account showing the distance and route traveled, the method of transportation and the items of expenditure paid or incurred, allowable under section six hundred and two; which count shall then, be subscribed and affirmed by him as true under the penalties of perjury to which shall be added the certificate of the warden of such prison, setting forth the number of prisoners so conveyed, and the distance from such prison to the place of their conviction.

§ 604. Payment of accounts for transporting prisoners. The account, certified and attested as provided in the preceding section, shall be subject to audit by the comptroller, and be paid out of the treasury, unless otherwise provided.

§ 605. Prisoners sentenced at one session of court to be transported at same time. All the prisoners who shall be sentenced to imprisonment in the same state prison, at one session of a criminal court, shall be transported at the same time, unless said court shall expressly direct otherwise.

§ 605-a. Transportation of female incarcerated individuals. Whenever any female incarcerated individual is conveyed to an institution under the jurisdiction of the state department of corrections and community supervision pursuant to sentence or commitment, such female incarcerated individual shall be accompanied by at least one female officer.

§ 606. Payment of costs for prosecution of incarcerated individuals. 1. When an incarcerated individual of an institution of the department is alleged to have committed an offense while an incarcerated individual of such institution, the state shall pay all reasonable costs for the prosecution of such offense, including but not limited to, costs for: a grand jury impaneled to hear and examine evidence of such offense, petit jurors, witnesses, the defense of any incarcerated individual financially unable to obtain counsel in accordance with the provisions of the county law, the district attorney, the costs of the sheriff and the appointment of additional court attendants, officers or other judicial personnel.

2. It shall be the duty of the board of supervisors of any county wherein such prosecution occurs to cause a sworn statement of all costs to be forwarded to the department. Upon certification by the department that such costs as authorized by this statute have been incurred, the department shall forward the proper vouchers to the state comptroller. It shall be the duty of the comptroller to examine such statement and to correct same by striking therefrom any and all items which are not authorized pursuant to the provisions of this section and after correcting such statement, the comptroller shall draw his warrant for the amount of any such costs in favor of the appropriate county treasurer, which sum shall be paid to said county treasurer out of any moneys appropriated therefor.

3. The department shall, after consultation with the director of the budget promulgate rules and regulations to carry out the provisions of this section.

§ 607. Prohibition of double-bunked housing. 1. For purposes of this section "double-bunked housing" shall mean the practice of incarcerated individual housing where bunk beds are used in a dormitory setting, with incarcerated individuals residing in an open space and sleeping on bunk beds.

2. Upon the effective date of this section, the department is prohibited from housing incarcerated individuals using double-bunked housing practices in correctional facilities. Any incarcerated individuals housed in such double-bunked housing on the effective date of this section shall be moved to other housing accommodations provided that such accommodations are not located in a more restrictive housing unit or correctional facility unless otherwise appropriate.

3. The department is authorized to promulgate or repeal any rules and regulations necessary to facilitate the implementation of this section.

§ 610. Freedom of worship. 1. All persons who may have been or may hereafter be committed to or taken charge of by any of the institutions mentioned in this section, are hereby declared to be and entitled to the free exercise and enjoyment of religious profession and worship, without discrimination or preference.

2. This section shall be deemed to apply to every incorporated or unincorporated society for the reformation of its incarcerated individuals, as well as houses of refuge, penitentiaries, protectories, reformatories or other correctional institutions, continuing to receive for its use, either public moneys, or a per capita sum from any municipality for the support of incarcerated individuals.

3. The rules and regulations established for the government of the institutions mentioned in this section shall recognize the right of the incarcerated individuals to the free exercise of their religious belief, and to worship God according to the dictates of their consciences, including baptism by immersion, in accordance with the provisions of the constitution; and shall allow religious services on Sunday and for private ministration to the incarcerated individuals in such manner as may best carry into effect the spirit and intent of this section and be consistent with the proper discipline and management of the institution; and the incarcerated individuals of such institutions shall be allowed such religious services and spiritual advice and spiritual ministration

from some recognized clergyman of the denomination or church which said incarcerated individuals may respectively prefer or to which they may have belonged prior to their being confined in such institutions; but if any of such incarcerated individuals shall be minors under the age of sixteen years, then such services, advice and spiritual ministration shall be allowed in accordance with the methods and rites of the particular denomination or church which the parents or guardians of such minors may select; such services to be held and such advice and ministration to be given within the buildings or grounds, whenever possible, where the incarcerated individuals are required by law to be confined, in such manner and at such hours as will be in harmony, as aforesaid, with the discipline and the rules and regulations of the institution and secure to such incarcerated individuals free exercise of their religious beliefs in accordance with the provisions of this section. In case of a violation of any of the provisions of this section any person feeling himself or herself aggrieved thereby may institute proceedings in the supreme court of the district where such institution is situated, which is hereby authorized and empowered to enforce the provisions of this section.

§ 611. Births to incarcerated individuals of correctional institutions and care of children of incarcerated individuals of correctional institutions. 1. (a) If a woman confined in any institution or local correctional facility be pregnant and about to give birth to a child, the superintendent or sheriff in charge of such institution or facility, a reasonable time before the anticipated birth of such child, shall cause such woman to be removed from such institution or facility and provided with comfortable accommodations, maintenance and medical care elsewhere, under such supervision and safeguards to prevent her escape from custody as the superintendent or sheriff or his or her designee may determine. No restraints of any kind shall be used during transport of such woman, a woman who is known to be pregnant by correctional personnel or personnel providing medical services to the institution or local correctional facility, or a woman within eight weeks after delivery or pregnancy outcome, absent extraordinary circumstances in which:

i. the superintendent or sheriff or his or her designee in consultation with the medical professional responsible for the institution has made an individualized determination that restraints are necessary to prevent such woman from injuring herself or medical or correctional personnel or others and cannot reasonably be restrained by other means, including the use of additional personnel; or

ii. the correctional personnel directly responsible for the transport of such a woman determine that an emergency has arisen in which restraints are necessary because the woman poses an immediate risk of serious injury to herself or medical or correctional personnel or others and cannot reasonably be restrained by other means.

(b) If a determination has been made pursuant to subparagraph i or ii of paragraph (a) of this subdivision that extraordinary circumstances exist then restraints shall be limited to wrist restraints in front of the body. The superintendent or sheriff or his or her designee pursuant to subparagraph i of paragraph (a) of this subdivision or correctional personnel pursuant to subparagraph ii of paragraph (a) of this subdivision shall document in writing the facts upon which the finding of extraordinary circumstances were based within five days of the use of such restraints and shall also document the type of restraints used and the length of time such restraints were used.

(c) No restraints of any kind shall be used when such woman is in labor, admitted to a hospital, institution or clinic for delivery, or recovering after giving birth. Any such personnel as may be necessary to supervise the woman during transport to and from and during her stay at the hospital, institution or clinic shall be provided to ensure adequate care, custody and control of the woman, except that no correctional staff shall be present in the delivery room during the birth of a baby unless requested by the medical staff supervising such delivery or by the woman giving birth. The woman shall be permitted to have at least one support person of her choosing accompany her in the delivery room and when such woman is in labor and recovering after giving birth. A support person shall not need to have visited the woman at a correctional facility prior to serving as a support person. A person may not be denied eligibility to serve as a support person solely on the basis of a past criminal conviction or that such person is on probation, conditional release, parole or post release supervision. Any decision by an agency to deny a woman's request to have a specific person serve as a support person shall be made with reasons specified in writing within five days of her request and promptly provided to the woman. A support person shall be notified immediately after such woman goes into labor, or immediately after a caesarean section or termination is scheduled. If available, a doula, midwife or other birthing support specialist may also assist during labor and delivery in addition to at least one support person of the woman's choosing. Any woman confined in a state or local correctional facility shall receive notice in writing in a language and manner understandable to her about the requirements of this section upon her admission to such state or local correctional facility and again when she is known to be pregnant. The superintendent or sheriff shall publish notice of the requirements of this section in prominent locations where medical care is provided. The superintendent or sheriff or his or her designee shall cause such woman to be subject to return to such institution or local correctional facility as soon after the birth of her child as the state of her health will permit as determined by the medical professional responsible for the care of such woman. If such woman is confined in a local correctional facility, the expense of such accommodation, maintenance and medical care shall be paid by such woman or her relatives or from any available funds of the local correctional facility and if not available from such sources, shall be a charge upon the county, city or town in which is located the court from which such incarcerated individual was committed to such local correctional facility. If such woman is confined in any institution under the control of the department, the expense of such accommodation, maintenance and medical care shall be paid by such woman or her relatives and if not available from such sources, such maintenance and medical care shall be paid by the state. In cases where payment of such accommodations, maintenance and medical care is assumed by the county, city or town from which such incarcerated individual was committed the payor shall make payment by issuing payment instrument in favor of the agency or individual that provided such accommodations and services, after certification has been made by the head of the institution to which the incarcerated individual was legally confined, that the charges for such accommodations, maintenance and medical care were necessary and are just, and that the institution has no available funds for such purpose.

(d) Any woman confined in an institution or local correctional facility shall receive notice in writing in a language and manner understandable to her about the requirements of this section upon her admission to an institution or local correctional facility and again when she is known to be pregnant. The superintendent or sheriff shall publish notice of the requirements of this section in prominent locations where medical care is provided. The department and the sheriff shall provide annual training on provisions of this section to all correctional personnel who are involved in the transportation, supervision or medical care of incarcerated women.

(e) The department shall report annually to the governor, the temporary president of the senate, the minority leader of the senate, the speaker of the assembly, the minority leader of the assembly, the chairperson of the senate crime victims, crime and correction committee and the chairperson of the assembly correction committee concerning every use of restraints on a woman under this section, including the reason such restraint was used, the type of restraint used and the length of time such restraint was used pursuant to paragraph (b) of this subdivision, but shall exclude individual identifying information. The sheriff of each county shall report, in a form and manner prescribed by the commission, every use of restraints on a woman under this section, including the reason such restraint was used, the type of restraint used and the length of time such restraint was used pursuant to paragraph (b) of this subdivision, annually to the commission. The commission shall include such information in its annual report pursuant to section forty-five of this chapter, but shall exclude identifying information from such report. Reports required by this section shall be posted on the websites maintained by the department and the commission.

2. A child so born may be returned with its mother to the correctional institution in which the mother is confined unless the chief medical officer of the correctional institution shall certify that the mother is physically unfit to care for the child, in which case the statement of the said medical officer shall be final. A child may remain in the

correctional institution with its mother for such period as seems desirable for the welfare of such child, but not after it is one year of age, provided, however, if the mother is in a state reformatory and is to be paroled shortly after the child becomes one year of age, such child may remain at the state reformatory until its mother is paroled, but in no case after the child is eighteen months old. If a pregnant woman or mother of a child under the age of eighteen months is incarcerated at a state or local correctional facility, the department shall inform her of her ability to apply to any nursery program run by the department and the locality. Any woman confined in a state or local correctional facility shall receive notice in writing in a language and manner understandable to her about the requirements of this section upon her admission to a state or local correctional facility and again when she is known to be pregnant. The superintendent or sheriff shall publish notice of the requirements of this section in prominent locations where medical care is provided. The officer in charge of such institution may cause a child cared for therein with its mother to be removed from the institution at any time before the child is one year of age. He or she shall make provision for a child removed from the institution without its mother or a child born to a woman incarcerated individual who is not returned to the institution with its mother as hereinafter provided. He or she may, upon proof being furnished by the father or other relatives of their ability to properly care for and maintain such child, give the child into the care and custody of such father or other relatives, who shall thereafter maintain the same at their own expense. If it shall appear that such father or other relatives are unable to properly care for and maintain such child, such officer shall place the child in the care of the commissioner of public welfare or other officer or board exercising in relation to children the power of a commissioner of public welfare of the county from which such incarcerated individual was committed as a charge upon such county. The officer in charge of the correctional institution shall send to such commissioner, officer or board a report of all information available in regard to the mother and the child. Such commissioner of public welfare or other officer or board shall care for or place out such child as provided by law in the case of a child becoming dependent upon the county.

3. If any woman, committed to any such correctional institution at the time of such commitment is the mother of a nursing child in her care under one year of age, such child may accompany her to such institution if she is physically fit to have the care of such child, subject to the provisions of subdivision two of this section. If any woman committed to any such institution at the time of such commitment is the mother of and has under her exclusive care a child more than one year of age the justice or magistrate committing such woman shall refer such child to the commissioner of public welfare or other officer or board exercising in relation to children the power of a commissioner of public welfare of the county from which the woman is committed to be cared for as provided by law in the case of a child becoming dependent upon the county.

4. Upon admitting a woman known to be pregnant, or upon learning of pregnancy status, the chief medical officer of each correctional facility housing female incarcerated individuals, including the medical professional responsible for each local correctional facility housing female incarcerated individuals, or such officer or professional's designee, shall immediately inform such woman of the option of participating in pregnancy counseling services and the right to abortion services.

§ 611-a. Commitments to county or regional correctional institutions. 1. Any commitment to a county or regional correctional institution pursuant to subdivision two of section 70.20 of the penal law shall be deemed a commitment to the county jail, workhouse or penitentiary, or to a penitentiary outside the county in the case of an agreement pursuant to section four hundred eighty of this chapter, as the case may be, and the order of commitment shall specify the institution in which the sentence is to be served.

2. Nothing in this section shall affect or limit any other provision of law with respect to transfers of persons so committed.

§ 612. United States prisoners. 1. A sheriff must receive into his or her jail and keep a prisoner, committed to the same, by virtue of civil process issued by a court of record, instituted under the authority of the United States, until he or she is discharged by the due course of the laws of the United States, in the same manner as if he was committed by virtue of a mandate in a civil action, issued from a court of the state. A sheriff or jailer, to whose jail a civil prisoner is committed, as prescribed herein, is answerable for his or her safe keeping in the courts of the United States, according to the laws thereof.

2. The commissioner may enter into an agreement to provide for custody by the department of persons who are being detained by virtue of an order issued by a court of the United States. An agreement made under this section shall require the United States to pay the cost of treatment, maintenance and custody furnished by the department.

§ 613. Conveyance of prisoner after arrest. A sheriff or other officer, who has lawfully arrested a civil prisoner, may convey his prisoner through one or more other counties, in the ordinary route of travel, from the place where the prisoner was arrested, to the place where he is to be delivered or confined.

§ 614. Care and support of civil prisoner. A person arrested, by virtue of an order of arrest, in an action or special proceeding brought in a court of record; or of an execution issued upon a judgment rendered in a court of record; or surrendered in exoneration of his bail; must be safely kept in custody, in the manner prescribed by law, and, except as herein otherwise provided, at his own expense, until he satisfies the judgment rendered against him, or is discharged according to law. In any county, if a prisoner, actually confined in jail, makes oath before the sheriff, jailer, or deputy-jailer, that he is unable to support himself during his imprisonment, his support is a county charge.

§ 618. Duties of state correctional institutions, penitentiaries, county jails and reformatories. 1. It shall also be the duty of the commissioner to continue to make or have impressions made of the finger and thumbprints of all incarcerated individuals in any of the institutions under the jurisdiction of the department; in his or her discretion, to cause said incarcerated individuals to be measured and described; and to cause to be obtained and recorded, so far as possible, modus operandi statements of said incarcerated individuals. The commissioner shall cause such impressions and measurements of persons confined in state correctional institutions to be made by a person or persons in the official service of the state in conformity with the system now in use in the division of criminal justice services, and shall prescribe rules and regulations for obtaining and recording such modus operandi statements, and for keeping accurate records of such impressions, measurements and statements, in the offices of such institutions.

2. It is hereby made the duty of the officials having charge of all the penitentiaries and county jails in the state to cause incarcerated individuals confined therein under sentence for any crime to be measured and described and the fingerprint impressions of such incarcerated individuals to be made according to the rules and methods prescribed by the commissioner of criminal justice services. It shall also be the duty of such officials in charge of such institutions to procure so far as possible modus operandi statements from all such prisoners. And it shall be the duty of such officials to cause duplicate records of such measurements, impressions and statements to be made, two copies to be transmitted to the division of criminal justice services within twenty-four hours following the time of the reception of such incarcerated individuals in said institutions.

3. There shall continue to be maintained in the various state prisons, penitentiaries, reformatories and other penal institutions of the state during the time that prisoners are therein confined complete individual case histories of each prisoner so confined.

§ 619. Cooperation with authorized agencies of the department of social services. It shall be the duty of an official of any institution under the jurisdiction of the commissioner of corrections and community supervision to cooperate with an authorized agency of the department of social services in making suitable arrangements for an incarcerated individual confined therein to visit with his or her child pursuant to subdivision seven of section three hundred eighty-four-b of the social services law.

§ 620. Service of papers in civil judicial proceedings upon a prisoner. An officer to whom a paper in a civil judicial proceeding is delivered, in compliance with the requirements for service of the paper upon a prisoner in his custody, shall note thereon the date and time of its receipt and forthwith deliver it to the prisoner. The officer is liable to the prisoner for any damages resulting from a violation of this section.

§ 621. Interstate cooperation with law enforcement officers and agencies of other states and the federal government. 1. All law enforcement officers and agencies of this state and its subdivisions, including the division of criminal justice services, are hereby authorized to cooperate with agencies of other states and of the United States, having similar powers, to develop and carry on a complete interstate, national and international system of criminal identification and investigation, and to obtain and furnish, or to assist in obtaining and furnishing, any information from and to a law enforcement officer or agency of another jurisdiction to assist in the conduct of an investigation into any criminal matter or for use in a criminal prosecution.

2. Nothing in this section shall be construed to authorize or empower any law enforcement officer or agency to engage in any activity or type of work for which he or it does not otherwise have authority in conducting investigations or prosecutions in connection with crimes alleged to have been committed within this state, but the obtaining and furnishing of information pursuant to this section shall be deemed a part of the regular functions of the officer or agency obtaining and

furnishing the same.

§ 622. Sex offender treatment program. 1. The department shall make available a sex offender treatment program for those incarcerated individuals who are serving sentences for felony sex offenses, or for other offenses defined in subdivision (p) of section 10.03 of the mental hygiene law, and are identified as having a need for such program in accordance with sections eight hundred three and eight hundred five of this chapter. In developing the treatment program, the department shall give due regard to standards, guidelines, best practices, and qualifications recommended by the office of sex offender management. The department shall make such treatment programs available sufficiently in advance of the time of the incarcerated individual's consideration by the case review team, pursuant to section 10.05 of the mental hygiene law, so as to allow the incarcerated individual to complete the treatment program prior to that time.

2. The primary purpose of the program shall be to reduce the likelihood of reoffending by assisting such offenders to control their chain of behaviors that lead to sexual offending. The length of participation for each incarcerated individual to achieve successful completion shall be dependent upon the initial assessment of the incarcerated individual's specific needs and the degree of progress made by the incarcerated individual as a participant but shall not be less than six months.

3. The department's sex offender treatment program shall include residential programs, which shall require that at each correctional facility where the residential program is provided, incarcerated individual participants shall be housed within the same housing area in order to provide clinically appropriate treatment, and to provide a more structured and controlled setting.

4. Each residential program shall be staffed with a licensed psychologist who shall provide clinical supervision to the treatment staff, review, approve and modify treatment plans as appropriate for

individual incarcerated individuals, provide clinical assessments for participating incarcerated individuals, observe and participate in group sessions and make treatment recommendations. Each residential program shall also be staffed with a licensed clinical social worker or other mental health professional who shall be knowledgeable about the administration of testing instruments that are designed to measure the degree of a sex offender's psychopathy and his or her program needs. The assigned licensed psychologist shall also be knowledgeable about the application of such testing instruments.

5. Any incarcerated individual committed to the custody of the department on or after the effective date of this section for a felony sex offense, or for any of the other offenses listed in subdivision (p) of section 10.03 of the mental hygiene law, shall, as soon as practicable, be initially assessed by staff of the office of mental health who shall be knowledgeable regarding the diagnosis, treatment, assessment or evaluation of sex offenders. The assessment shall include, but not be limited to, the determination of the degree to which the incarcerated individual presents a risk of violent sexual recidivism and his or her need for sex offender treatment while in prison.

6. Staff of the office of mental health and the office for people with developmental disabilities may be consulted about the incarcerated individual's treatment needs and may assist in providing any additional treatment services determined to be clinically appropriate to address the incarcerated individual's underlying mental abnormality or disorder. Such treatment services shall be provided using professionally accepted treatment protocols.

§ 623. Incarcerated individual telephone services. 1. Telephone services contracts for incarcerated individuals in state correctional facilities shall be subject to the procurement provisions as set forth in article eleven of the state finance law provided, however, that when determining the best value of such telephone service, the lowest possible cost to the telephone user shall be emphasized.

2. The department shall make available either a "prepaid" or "collect call" system, or a combination thereof, for telephone service. Under the "prepaid" system, funds may be deposited into an account in order to pay for station-to-station calls, provided that nothing in this subdivision shall require the department to provide or administer a prepaid system. Under a "collect call" system, call recipients are billed for the cost of an accepted telephone call initiated by an incarcerated individual. Under such "collect call" system, the provider of incarcerated individual telephone service, as an additional means of payment, must permit the recipient of incarcerated individual calls to establish an account with such provider in order to deposit funds to pay for such collect calls in advance.

3. The department shall not accept or receive revenue in excess of its reasonable operating cost for establishing and administering such telephone system services as provided in subdivisions one and two of this section.

4. The department shall establish rules and regulations or departmental procedures to ensure that any incarcerated individual phone call system established by this section provides reasonable security measures to preserve the safety and security of each correctional facility, all staff and all persons outside a facility who may receive incarcerated individual phone calls.

§ 624. Next of kin; death of incarcerated individual. 1. (a) The department shall promptly notify the next of kin and any other person designated as the representative of any incarcerated individual whose death takes place during custody.

(b) The department shall promptly notify the next of kin and any other person designated as a representative of the circumstances surrounding the death of such incarcerated individual, the medical procedures used and the cause of death as reported in the final autopsy report as such information becomes available. The department shall be responsive to inquiries from the next of kin and other person designated as the representative regarding the preliminary determination.

(c) The next of kin and other person designated as a representative shall be identified from the emergency contact information previously provided by the incarcerated individual to the department.

2. Within forty-eight hours after the next of kin and any other person designated as a representative has been notified of such death, the department shall publish public notice of such death on the department's website.

§ 625. Menstrual products. Menstrual products, including, but not limited to, pads, tampons and panty liners, shall be provided at no cost to individuals housed in state and local correctional facilities used for the general confinement of incarcerated individuals and in any other state or local facility where individuals are detained or confined by law enforcement agencies.

§ 626. Medication assisted treatment in correctional facilities. 1. For purposes of this section "medication assisted treatment" means treatment of chemical dependence or abuse and concomitant conditions with medications requiring a prescription or order from an authorized prescribing professional.

2. (a) The commissioner, in conjunction with the office of addiction services and supports, shall establish a program to be administered at correctional facilities within the department in the state, for the purpose of employing medication assisted treatment for incarcerated individuals in such facilities who are undergoing treatment for a substance use disorder. Such program shall include all forms of medication assisted treatments approved for the treatment of a substance use disorder by the Federal Food and Drug Administration for the duration of an incarcerated individual's incarceration and shall provide an individualized treatment plan for each participant. After a medical screening, incarcerated individuals who are determined to suffer from a substance use disorder, for which FDA approved addiction medications exist shall be offered placement in the medication assisted treatment

program. Placement in such program shall not be mandatory. Each participating incarcerated individual shall work with an authorized specialist to determine an individualized treatment plan, including an appropriate level of counseling. Decisions regarding type, dosage, or duration of any medication regimen shall be made by a qualified health care professional licensed or certified under title eight of the education law who is authorized to administer such medication in conjunction with the incarcerated individual.

(b) i. Such program shall also include conditions for a reentry strategy for incarcerated individuals who have participated in medication assisted treatment. Such strategy shall include, but not be limited to, providing each participating incarcerated individual with information on available treatment facilities in their area, information on available housing and employment resources, and any other information that will assist the incarcerated individual in continued recovery once released. Such program shall also assist the incarcerated individual in Medicaid enrollment, prior to release.

ii. Such program shall provide participating incarcerated individuals preparing for release from prison with a one-week supply of any necessary medication, where permissible under federal laws and regulations to continue their medication assisted treatment in an effort to prevent relapse.

(c) Reentry planning and community supervision should include a collaborative relationship between clinical and parole staff including sharing of accurate information regarding the incarcerated individual's participation in medication assisted treatment to ensure that their medication is not deemed illicit or illegal. Additionally, procedures shall be developed to assist any reentrant who communicates a relapse with their parole officer or who fails a drug test, to receive substance use disorder support in lieu of arrest and/or incarceration.

3. The commissioner shall submit within one year of the effective date of this section and annually thereafter, a report to the governor, the temporary president of the senate and the speaker of the assembly on the effectiveness of the program established pursuant to this section. Such reports shall include an analysis of the impact of such program on the

participating incarcerated individuals, including factors such as institutional adjustment, behavior infractions, reentry rates, HIV and hepatitis C treatment, and program participation, among related relevant factors. The reports shall also include the impact on institutional safety and performance and any recommendations for additional legislative enactments that may be needed or required to improve or enhance the program as determined to be appropriate by the commissioner.

4. Participation in the medication assisted treatment program shall not be withheld from a qualified incarcerated individual. An incarcerated individual may enter into such program at any time during his or her incarceration. An incarcerated individual using medication assisted treatment prior to such incarcerated individual's incarceration shall be eligible to, upon request by such incarcerated individual, continue such treatment in the medication assisted treatment program for any period of time during the duration of such incarcerated individual's incarceration. No person shall be denied participation in the program on the basis of a positive drug screening upon entering custody or upon intake into the program; nor shall any person receive a disciplinary infraction for such positive drug screening. No person shall be removed from, or denied participation in the program on the basis of having received any disciplinary infraction: (a) before entry into the program; or (b) during participation in the program.

§ 627. Breast cancer screening and diagnostic testing. Breast cancer screening and diagnostic testing shall be offered in accordance with nationally recognized clinical practice guidelines for the detection of breast cancer unless otherwise recommended by a physician at no cost to individuals housed in state and local correctional facilities used for the general confinement of incarcerated individuals and in any other state or local facility where individuals are detained or confined by law enforcement agencies. For the purposes of this section, "nationally recognized clinical practice guidelines" means evidence-based clinical practice guidelines informed by a systematic review of evidence and an assessment of the benefits and risks of alternative care options intended to optimize patient care, developed by independent organizations or medical professional societies utilizing a transparent methodology and reporting structure and with a conflict-of-interest policy.

* ARTICLE 22-A

PRISONER FURLOUGHS

* NB Repealed September 1, 2027

*** § 630. Applicability.** This article shall be applicable only to prisoners sentenced to institutions operated by a department of correction in cities having a population of one million or more or by a county which elects to have this article apply thereto.

* NB Repealed September 1, 2027

*** § 631. Definitions.** As used in this article the following terms shall have the following meanings:

1. "Institution" means any institution under the jurisdiction of the commissioner of correction in any city having a population of one million or more or of a county which elects to have this article apply thereto.

2. "Eligible incarcerated individual" means a person confined in a city prison or reformatory in a city having a population of one million or more or in a county jail and penitentiaries of a county which elects to have this article apply thereto where a furlough program has been established who is sentenced to a definite period of six months or more

or to a reformatory sentence of imprisonment and has served a minimum of six months of any such sentence.

3. "Furlough program" means a program under which eligible incarcerated individuals may be granted the privilege of leaving the premises of a prison for a period not exceeding seventy-two hours for the purpose of seeking employment, maintaining family ties, solving family problems, to undergo surgery or to receive medical treatment or dental treatment not available in the correctional institution, or for any matter necessary to the furtherance of any such purposes.

4. "Extended bounds of confinement" means the area in which an incarcerated individual participating in a furlough program may travel, the routes he or she is permitted to use, the places he or she is authorized to visit, and the hours, days, or specially defined period during which he or she is permitted to be absent from the premises of the institution. An extension of limits shall be under such prescribed conditions as the commissioner deems necessary. Such extension of limits may be withdrawn at any time.

5. "Furlough committee" means the body of persons which may include members of the public, appointed pursuant to regulations promulgated by the commissioner for the purposes of formulating, modifying and revoking furlough programs at an institution.

6. "Warden" means the person in charge of an institution by whatever title he may be known.

7. "Commissioner" means the commissioner of correction in a city having a population of one million or more or that official having similar duties in any county which elects to have this article apply thereto, by whatever title he may be known.

8. "Department" means the applicable department of correction or, where no such department exists, the office of the commissioner.
* NB Repealed September 1, 2027

*** § 632. Establishment of a furlough program.** The commissioner shall designate, in the rules and regulations of the department; appropriate employees or an appropriate unit of the department, to be responsible for (i) securing education, on-the-job training and employment opportunities for incarcerated individuals who are eligible to participate in a furlough program and (ii) supervising incarcerated individuals during their participation in a furlough program outside the premises of the institution.

* NB Repealed September 1, 2027

*** § 633. Procedure for furlough release of eligible incarcerated individuals.** 1. A person confined in a city prison or a county jail and penitentiaries of a county which elects to have this article apply thereto who is, or who within thirty days will become, an eligible incarcerated individual, may make application to the furlough release committee of the institution for permission to participate in a furlough program.

2. Any eligible incarcerated individual may make application to the furlough committee for leave of absence provided, however, that in exigent circumstances such application may be made directly to the warden of the institution and the warden may exercise all of the powers of the furlough committee subject, however, to any limitations or requirements set forth in the rules and regulations of the department and subject further to the discretion of the commissioner.

3. If the furlough committee determines that a furlough program for the applicant is consistent with the safety of the community, is in the best interests of rehabilitation of the applicant, and is consistent with the rules and regulations of the department, the committee, with the assistance of the employees designated by the commissioner pursuant to section six hundred thirty-two of this chapter, shall develop a suitable furlough program for the applicant.

4. The committee shall then prepare a memorandum setting forth the

details of the furlough program including the extended bounds of confinement and any other matter required by the rules and regulations of the department. Such memorandum shall be transmitted to the warden who may approve or reject the program. If the warden approves the program, he shall indicate such approval in writing by signing the memorandum. If the warden rejects the program, such decision shall be reviewed by the commissioner.

5. In order for the applicant to accept the furlough program, he shall agree to be bound by all the terms and conditions thereof and shall indicate such agreement by signing the memorandum of the program immediately below a statement reading as follows:

"I accept the foregoing program and agree to be bound by the terms and conditions thereof. I understand I will be under the supervision of the department while I am away from the premises of the institution and I agree to comply with the instructions of any employee of the department assigned to supervise me. I will carry a copy of this memorandum on my person at all times while I am away from the premises of the institution and I will exhibit it to any peace officer or police officer upon his request. I understand that my participation in the program is a privilege which may be revoked at any time, and that if I violate any provision of the program I may be taken into custody by any peace officer or police officer and I will be subject to disciplinary procedures. I further understand that if I intentionally fail to return to the institution at or before the time specified in the memorandum I may be found guilty of a misdemeanor."

6. After approving the program of furlough, the warden may then permit an eligible incarcerated individual who has accepted such program to go outside the premises of the institution within the limits of the extended bounds of confinement described in the memorandum; provided, however, that no such permission shall become effective in the case of a furlough program prior to the time at which the person to be released becomes an eligible incarcerated individual.

7. Participation in a furlough release program shall be a privilege. Nothing contained in this article may be construed to confer upon any

incarcerated individual the right to participate, or to continue to participate in a furlough program. The warden of the institution may at any time, and upon recommendation of the furlough committee or of the commissioner, revoke any incarcerated individual's privilege to participate in a program of furlough.

* NB Repealed September 1, 2027

*** § 634. Conduct of incarcerated individuals participating in furlough program.** 1. An incarcerated individual who is permitted to leave the premises of an institution to participate in a furlough program shall have on his or her person a copy of the memorandum of that program as signed by the warden of the institution and shall exhibit such copy to any peace officer or police officer upon request of such officer.

2. If the incarcerated individual violates any provision of the program, or any rule, or regulation promulgated by the commissioner for conduct of incarcerated individuals participating in furlough programs, he or she shall be subject to disciplinary measures to the same extent as if he or she violated a rule or regulation of the commissioner for conduct of incarcerated individuals within the premises of the institution.

3. The provisions of this section relating to good behavior of incarcerated individuals while participating in furlough programs outside the premises of institutions, and such allowances may be granted, withheld, forfeited or cancelled in whole or part for behavior outside the premises of an institution to the same extent and in the same manner as is provided for behavior of incarcerated individuals within the premises of the institutions.

4. An incarcerated individual who is in violation of the provisions of his or her furlough program may be taken into custody by any peace officer or police officer and, in such event the incarcerated individual shall be returned forthwith to the institution that released him or her. In any case where the institution is in a county other than the one in which the incarcerated individual is apprehended, the officer may

deliver the incarcerated individual to the nearest institution, jail or lockup and it shall be the duty of the person in charge of said facility to hold such incarcerated individual securely until such time as he or she is delivered into the custody of an officer of the institution from which he or she was released. Upon delivering the incarcerated individual to an institution, jail or lockup, other than the one from which he or she was released, the officer who apprehended the incarcerated individual shall forthwith notify the warden of the institution from which the incarcerated individual was released and it shall be the duty of the warden to effect the expeditious return of the incarcerated individual to the institution.

* NB Repealed September 1, 2027

ARTICLE 22-B

THE DEATH PENALTY

§ 650. Warrant for execution of death sentence. 1. When a person is sentenced to the punishment of death, the justice or judge who presided at the sentencing proceeding, or if that justice or judge is unavailable for any reason, then any justice of the supreme court of the department in which the defendant was sentenced, must, within seven days, make out, sign and deliver to the sheriff of the county, a warrant directed to the commissioner or to the superintendent of an institution in the department designated by the commissioner. Such warrant shall state the conviction and sentence, appoint a week on which the sentence shall be executed, and command the commissioner to execute the sentence within that week. In counties within the city of New York, or in the county of Westchester, such warrant shall be made out as aforesaid, signed and delivered to the commissioner of correction of such city or county.

2. If the execution of the sentence shall be delayed while the conviction or sentence is being appealed, a justice or judge authorized to act pursuant to subdivision one of this section, at the conclusion of the state appellate process, if the conviction or sentence is not set aside, must, within seven days, make out, sign and deliver another warrant as provided in subdivision one of this section. If the execution of the sentence on the date appointed is delayed by any other cause, the justice or judge shall, as soon as such cause ceases to exist, make out, sign and deliver another warrant.

§ 651. Time of execution. The week of execution appointed in the warrant shall be not less than thirty days and not more than sixty days after the issuance of the warrant. The date of execution within said week shall be left to the discretion of the commissioner, but the date and hour of the execution shall be announced publicly no later than seven days prior to said execution.

§ 652. Delivery of warrant and confinement. 1. Within ten days after the issuance of a warrant as provided in section six hundred fifty of this article, the sheriff or the commissioner of correction, if within the city of New York or county of Westchester, must deliver the warrant and the person sentenced, if that person is not already in the custody of the department, to the department or to the superintendent of the state institution designated by the commissioner. Upon the issuance of the warrant the court shall cause a copy to be personally delivered to the convicted person and shall send a copy of the warrant to the convicted person's last attorney of record.

2. From the time of the delivery of the warrant and until the imposition of the punishment of death upon the convicted person, unless discharged from the sentence, such person may, in the commissioner's discretion, either be kept isolated from the general prison population in a designated institution or confined as otherwise provided by law. The commissioner, in his discretion, may determine that the safety and security of the facility, or of the inmate population, or of the staff, or of the inmate, would not be jeopardized by the inmate's confinement within the general prison population.

3. The commissioner may promulgate rules and regulations concerning visitation of inmates sentenced to death. Such rules and regulations may provide that inmates sentenced to death are subject to different visitation policies and procedures than inmates who are not sentenced to death.

§ 653. Transmittal of record to the governor. Within a reasonable time following the issuance of the warrant as provided in section six hundred fifty of this article, the clerk of the court in the county in which the person was sentenced to death shall transmit to the governor a statement of conviction and sentence, and the transcripts of both the trial and the sentencing proceedings, including, to the extent practicable, any exhibits introduced therein.

§ 654. Governor may consult. The governor is authorized to request the opinion of the attorney general, the district attorney, and the convicted person's counsel, or any of them, as to whether the execution of the person should be reprieved or suspended.

§ 655. Governor only to reprieve. No judge, court, or officer, other than the governor, can reprieve the execution of a person sentenced to death. This section does not apply to a stay authorized by law.

§ 656. Proceeding when person under sentence of death may be incompetent. 1. The state may not execute an inmate who is incompetent. An inmate is "incompetent" when, as a result of mental disease or defect, he lacks the mental capacity to understand the nature and effect of the death penalty and why it is to be carried out.

2. Upon the filing of a petition in the supreme court in either the county in which an inmate sentenced to death is confined or in the county in which the inmate was prosecuted alleging that the inmate is incompetent, the court shall issue an order staying the execution if and to the extent a stay is necessary to permit determination of the petition. Upon application of either the inmate's counsel or the district attorney the petition may be transferred to the court in which the inmate was convicted unless such transfer would be unduly burdensome or impracticable. Promptly upon filing the petition, the court shall appoint a commission of three psychiatric examiners, hereinafter referred to as "the psychiatric commissioners," to inquire into the inmate's competence and report to the court as to the inmate's competence. The psychiatric commissioners shall be impartial and must be qualified psychiatrists or certified psychologists. Before commencing an inquiry, the psychiatric commissioners must take the oath prescribed in rule forty-three hundred fifteen of the civil practice law and rules to be taken by referees. The petition may be filed by the inmate, the inmate's counsel, an employee of the department, the inmate's legal guardian, a member of such inmate's immediate family or, in the event that the inmate does not have regular contact with a member of his or her immediate family, a bona fide friend who has maintained regular contact with the inmate. The petition must be accompanied by an affidavit of at least one qualified psychiatrist or certified psychologist who, based at least in part on personal examination, attests that in the psychiatrist's or psychologist's professional opinion the inmate is incompetent and lists the pertinent facts therefor. For purposes of this section the terms "qualified psychiatrist" and "certified psychologist" have the meaning set forth in section 730.10 of the criminal procedure law.

3. The petition shall be served upon either the district attorney who prosecuted the inmate or upon the district attorney for the county in which the inmate is confined. If the petition is served upon the district attorney for the county in which the inmate is confined, the court shall promptly notify the district attorney who prosecuted the inmate. Immediately upon appointing the psychiatric commissioners, the court shall direct that an examination of the convicted person promptly take place with all three of the psychiatric commissioners present at the same time. The court shall also direct, upon application of the inmate or the district attorney, that the inmate be examined by a qualified psychiatrist or certified psychologist designated by the inmate or the district attorney. Counsel for the inmate and the district attorney shall have the right to be present at each such examination. Upon the filing of a petition pursuant to subdivision two of this section, if the inmate does not have counsel and is financially unable to obtain counsel the court shall appoint competent counsel experienced in the trial of criminal matters to represent the inmate.

4. The psychiatric commissioners must receive and consider evidence offered by the inmate's counsel and the district attorney, including written submissions, testimony and expert psychiatric evidence. The proceeding before the psychiatric commissioners shall be conducted on the record but need not be conducted in accordance with the rules governing the admission of evidence at trial, but counsel for the people and the inmate shall have the right to cross-examine witnesses.

5. When the proceeding before the psychiatric commissioners has been concluded, they must forthwith provide a transcript of the proceeding, together with their findings of fact, to the court with their opinion thereon. Unless impracticable, the psychiatric commissioners shall so act within sixty days from the filing of the petition. When an inmate shall be found incompetent by a majority of the psychiatric commissioners, the court shall accept such finding unless clearly erroneous, and promptly enter an order finding the inmate to be incompetent, staying the execution of the inmate and directing that the inmate be committed to a secure facility under the jurisdiction of the

office of mental health if the inmate's incompetency is the result of mental illness. In all other cases, the inmate shall remain in the custody of the department. When an inmate is found competent by a majority of the psychiatric commissioners, the court shall accept such finding unless clearly erroneous, promptly enter an order finding the inmate to be competent and vacating any stay previously issued, and the court shall promptly inform the judge or justice who issued the warrant for the execution of the inmate of the court's finding. Upon being so informed, the judge or justice shall promptly issue a new warrant in accordance with subdivision two of section six hundred fifty of this article. Any other provision of law notwithstanding, no other review, judicial or otherwise, shall be available with respect to an order finding the inmate to be incompetent or competent. If the court rejects the finding of a majority of the psychiatric commissioners on the ground that it is clearly erroneous, the court shall appoint another commission to proceed as provided in this section.

6. When an inmate has been committed to a secure facility pursuant to this section, the inmate shall remain there until the facility administrator determines that the inmate may be competent. Upon so determining, the facility administrator shall promptly notify the court that entered the order finding the inmate to be incompetent, and the court shall promptly notify counsel and the district attorneys and appoint another commission to proceed as provided in this section.

7. The court shall allow reasonable fees to the psychiatric commissioners. The court shall allow reasonable fees for time spent in court and for time reasonably expended out of court to counsel appointed pursuant to this section. The court shall allow all reasonably necessary costs, including without limitation the costs attendant to fees for the examination of the inmate by a qualified psychiatrist or certified psychologist, incurred by the inmate and the district attorney in connection with a petition pursuant to this section. Each claim for compensation and reimbursement shall be supported by a sworn statement specifying the time expended, services rendered, expenses incurred and reimbursement or compensation applied for or received in the same case from any other source. All such fees and costs shall be a state charge

payable on vouchers approved by the court after audit by and on the warrant of the comptroller.

8. When a petition has previously been filed and determined pursuant to this section, the court in which a subsequent petition is filed or to which a subsequent petition is transferred, shall not issue an order staying the execution of the inmate unless the court finds, after notice to the district attorney who prosecuted the inmate and after affording the district attorney a reasonable opportunity to be heard in writing, that there is reasonable cause to believe that the inmate is incompetent; provided, however, that the court may issue an order staying the execution of the inmate, to the extent a stay is necessary to afford the district attorney an opportunity to be heard and such reasonable cause determination to be made.

§ 657. Proceeding when person under sentence of death is pregnant. 1. A sentence of death may not be carried out upon a woman while she is pregnant.

2. When the superintendent of the correctional facility where the inmate is confined is informed that reasonable grounds exist that a convicted person under sentence of death may be pregnant, the superintendent shall appoint a qualified physician to examine the convicted person and determine if she is pregnant.

3. Upon being informed by the superintendent that such convicted person is pregnant, the governor shall stay execution of the warrant to the extent necessary.

§ 658. Death penalty inflicted by lethal injection. The punishment of death shall be inflicted by lethal injection; that is, by the intravenous injection of a substance or substances in a lethal quantity into the body of a person convicted until such person is dead.

§ 659. Facility. The commissioner shall provide and maintain a suitable and efficient facility, enclosed from public view, within the confines of a designated correctional institution for the imposition of the punishment of death. That facility shall contain the apparatus and equipment necessary for the carrying out of executions by lethal injection.

§ 660. Persons authorized to be present at execution. 1. The commissioner, any persons designated by the commissioner to act as execution technicians or otherwise to assist in the execution, including correction officers, and a licensed physician or physicians may be present at the execution. The commissioner shall also select and invite the presence, by at least three days' prior notice, of a justice of the supreme court, the counsel for the convicted person, the district attorney and the sheriff of the county where the conviction was had, together with six adult citizens. The names of the execution technician or technicians shall never be disclosed, notwithstanding any other provision of law to the contrary, including article six of the public officers law. The names of the six adult citizens who witnessed the execution shall not be disclosed until after the execution.

2. The commissioner shall, at the request of the person sentenced to death, authorize and permit two clergymen to be present at the execution.

3. The inmate sentenced to death may name four relatives or bona fide friends to witness the execution, and the commissioner shall authorize said named relatives or friends of the inmate to witness the execution unless the commissioner determines that the presence of any named relative or friend at the execution would pose a threat to the safety or security of the designated correctional institution. No person under eighteen years of age shall be permitted to witness any execution.

§ 661. Examination of convicted person's body and certificate. 1. Immediately after the execution an examination of the body of the convicted person shall be made by the licensed physicians present at the execution and their report in writing stating the nature of the examination and occurrence of death, so made by them, shall be annexed to the certificate provided for in subdivision two of this section and filed therewith.

2. The commissioner shall prepare and sign a certificate setting forth the time and place of the execution and stating that the execution was conducted in conformity to the sentence of the court and the provisions of this article. The commissioner shall cause the certificate to be filed, within ten days after the execution, with the office of clerk of the court in which the conviction was had.

3. The commissioner may appoint a deputy with the department to execute the warrant of execution and to perform all other duties imposed upon the commissioner under this article.

§ 662. Disposition of body. 1. Prior to the execution, the convicted person shall be given the opportunity to decide in writing to whom his or her body shall be delivered after the execution. The commissioner or his or her designee shall sign and authorize the convicted person's request if the request is not contrary to law. If the convicted person does not indicate to whom such person's body shall be delivered, or if the person's request is contrary to law, the commissioner may deliver the convicted person's body to a relative by blood or marriage or a bona fide friend. If the body is not claimed by a relative or bona fide friend within seven days after execution, the body shall be delivered to a duly authorized and incorporated pathological and anatomical association in the state, if requested by an authorized association.

2. If the body of the convicted person is not claimed by a relative, bona fide friend, or a duly authorized and incorporated pathological and anatomical association, the commissioner shall cause the body to be disposed of in the same manner as are bodies of prisoners dying in the institution. Notwithstanding any other provision of law, no autopsy shall be required for the body of an inmate upon whom a sentence of

death has been carried out.

ARTICLE 23

DISCRETIONARY RELIEF FROM FORFEITURES AND DISABILITIES AUTOMATICALLY IMPOSED BY LAW

§ 700. Definitions and rules of construction. 1. As used in this article the following terms have the following meanings:

(a) "Eligible offender" shall mean a person who has been convicted of a crime or of an offense, but who has not been convicted more than once of a felony.

(b) "Felony" means a conviction of a felony in this state, or of an offense in any other jurisdiction for which a sentence to a term of imprisonment in excess of one year, or a sentence of death, was authorized.

(c) "Revocable sentence" means a suspended sentence or a sentence upon which execution was suspended pursuant to the penal law in effect prior to September first, nineteen hundred sixty-seven; or a sentence of probation or of conditional discharge imposed pursuant to the penal law in effect after September first, nineteen hundred sixty-seven.

2. For the purposes of this article the following rules of construction shall apply:

(a) Two or more convictions of felonies charged in separate counts of one indictment or information shall be deemed to be one conviction;

(b) Two or more convictions of felonies charged in two or more indictments or informations, filed in the same court prior to entry of judgment under any of them, shall be deemed to be one conviction; and

(c) A plea or a verdict of gulity upon which sentence or the execution of sentence has been suspended or upon which a sentence of probation, conditional discharge, or unconditional discharge has been imposed shall be deemed to be a conviction.

§ 701. Certificate of relief from disabilities. 1. A certificate of relief from disabilities may be granted as provided in this article to relieve an eligible offender of any forfeiture or disability, or to remove any bar to his employment, automatically imposed by law by reason of his conviction of the crime or of the offense specified therein. Such certificate may be limited to one or more enumerated forfeitures, disabilities or bars, or may relieve the eligible offender of all forfeitures, disabilities and bars. Provided, however, that no such certificate shall apply, or be construed so as to apply, to the right of such person to retain or to be eligible for public office.

2. Notwithstanding any other provision of law, except subdivision five of section twenty-eight hundred six of the public health law or paragraph (b) of subdivision two of section eleven hundred ninety-three of the vehicle and traffic law, a conviction of a crime or of an offense specified in a certificate of relief from disabilities shall not cause automatic forfeiture of any license, other than a license issued pursuant to section 400.00 of the penal law to a person convicted of a class A-I felony or a violent felony offense, as defined in subdivision one of section 70.02 of the penal law, permit, employment, or franchise, including the right to register for or vote at an election, or automatic forfeiture of any other right or privilege, held by the eligible offender and covered by the certificate. Nor shall such conviction be deemed to be a conviction within the meaning of any provision of law that imposes, by reason of a conviction, a bar to any employment, a disability to exercise any right, or a disability to apply for or to receive any license, permit, or other authority or privilege covered by

the certificate; provided, however, that a conviction for a second or subsequent violation of any subdivision of section eleven hundred ninety-two of the vehicle and traffic law committed within the preceding ten years shall impose a disability to apply for or receive an operator's license during the period provided in such law; and provided further, however, that a conviction for a class A-I felony or a violent felony offense, as defined in subdivision one of section 70.02 of the penal law, shall impose a disability to apply for or receive a license or permit issued pursuant to section 400.00 of the penal law.

3. A certificate of relief from disabilities shall not, however, in any way prevent any judicial, administrative, licensing or other body, board or authority from relying upon the conviction specified therein as the basis for the exercise of its discretionary power to suspend, revoke, refuse to issue or refuse to renew any license, permit or other authority or privilege.

§ 702. Certificates of relief from disabilities issued by courts. 1. Any court of this state may, in its discretion, issue a certificate of relief from disabilities to an eligible offender for a conviction that occurred in such court, if the court either (a) imposed a revocable sentence or (b) imposed a sentence other than one executed by commitment to an institution under the jurisdiction of the state department of corrections and community supervision. Such certificate may be issued (i) at the time sentence is pronounced, in which case it may grant relief from forfeitures, as well as from disabilities, or (ii) at any time thereafter, in which case it shall apply only to disabilities. Where such court either imposes a revocable sentence or imposes a sentence other than one executed by commitment to an institution under the jurisdiction of the state department of corrections and community supervision, the court, upon application and in accordance with subdivision two of this section, shall initially determine the fitness of an eligible offender for such certificate prior to or at the time sentence is pronounced.

2. Such certificate shall be issued by the court when the court is

satisfied that:

(a) The person to whom it is to be granted is an eligible offender, as defined in section seven hundred of this article;

(b) The relief to be granted by the certificate is consistent with the rehabilitation of the eligible offender; and

(c) The relief to be granted by the certificate is consistent with the public interest.

3. Where a certificate of relief from disabilities is not issued at the time sentence is pronounced it shall only be issued thereafter upon verified application to the court. The court may, for the purpose of determining whether such certificate shall be issued, request its probation service to conduct an investigation of the applicant, or if the court has no probation service it may request the probation service of the county court for the county in which the court is located to conduct such investigation. Any probation officer requested to make an investigation pursuant to this section shall prepare and submit to the court a written report in accordance with such request.

4. Where the court has imposed a revocable sentence and the certificate of relief from disabilities is issued prior to the expiration or termination of the time which the court may revoke such sentence, the certificate shall be deemed to be a temporary certificate until such time as the court's authority to revoke the sentence has expired or is terminated. While temporary, such certificate (a) may be revoked by the court for violation of the conditions of the sentence, and (b) shall be revoked by the court if it revokes the sentence and commits the person to an institution under the jurisdiction of the state department of corrections and community supervision. Any such revocation shall be upon notice and after an opportunity to be heard. If the certificate is not so revoked, it shall become a permanent certificate upon expiration or termination of the court's authority to revoke the sentence.

5. Any court that has issued a certificate of relief from disabilities may at any time issue a new certificate to enlarge the relief previously granted, provided, however, that the provisions of subdivisions one

through four of this section shall apply to the issuance of any such new certificate.

6. Any written report submitted to the court pursuant to this section is confidential and may not be made available to any person or public or private agency except where specifically required or permitted by statute or upon specific authorization of the court. However, upon the court's receipt of such report, the court shall provide a copy of such report, or direct that such report be provided to the applicant's attorney, or the applicant himself, if he or she has no attorney. In its discretion, the court may except from disclosure a part or parts of the report which are not relevant to the granting of a certificate, or sources of information which have been obtained on a promise of confidentiality, or any other portion thereof, disclosure of which would not be in the interest of justice. The action of the court excepting information from disclosure shall be subject to appellate review. The court, in its discretion, may hold a conference in open court or in chambers to afford an applicant an opportunity to controvert or to comment upon any portions of the report. The court may also conduct a summary hearing at the conference on any matter relevant to the granting of the application and may take testimony under oath.

§ 703. Certificates of relief from disabilities issued by the department of corrections and community supervision. 1. The department of corrections and community supervision shall have the power to issue a certificate of relief from disabilities to:

(a) any eligible offender who has been committed to an institution under the jurisdiction of the state department of corrections and community supervision. Such certificate may be issued by the department at the time the offender is released from such institution under the department's supervision or otherwise or at any time thereafter;

(b) any eligible offender who resides within this state and whose judgment of conviction was rendered by a court in any other jurisdiction.

2. Where the department has issued a certificate of relief from

disabilities, the department may at any time issue a new certificate enlarging the relief previously granted.

3. The department shall issue a certificate of relief from disabilities pursuant to subdivisions one or two of this section, when the department is satisfied that:

(a) The person to whom it is to be granted is an eligible offender, as defined in section seven hundred of this article;

(b) The relief to be granted by the certificate is consistent with the rehabilitation of the eligible offender; and

(c) The relief to be granted by the certificate is consistent with the public interest.

4. Any certificate of relief from disabilities issued by the department to an eligible offender who at time of the issuance of the certificate is under the department's supervision, shall be deemed to be a temporary certificate until such time as the eligible offender is discharged from the department's supervision, and, while temporary, such certificate may be revoked by the department for violation of the conditions of community supervision. Revocation shall be upon notice to the releasee, who shall be accorded an opportunity to explain the violation prior to decision thereon. If the certificate is not so revoked, it shall become a permanent certificate upon expiration or termination of the department's jurisdiction over the individual.

5. In granting or revoking a certificate of relief from disabilities the action of the department shall be deemed a judicial function and shall not be reviewable if done according to law.

6. For the purpose of determining whether such certificate shall be issued, the department may conduct an investigation of the applicant.

7. Presumption based on federal recommendation. Where a certificate of relief from disabilities is sought pursuant to paragraph (b) of subdivision one of this section on a judgment of conviction rendered by a federal district court in this state and the department is in receipt of a written recommendation in favor of the issuance of such certificate

from the chief probation officer of the district, the department shall issue the requested certificate, unless it finds that the requirements of paragraphs (a), (b) and (c) of subdivision three of this section have not been satisfied; or that the interests of justice would not be advanced by the issuance of the certificate.

§ 703-a. Certificate of good conduct. 1. A certificate of good conduct may be granted as provided in this section to relieve an individual of any disability, or to remove any bar to his employment, automatically imposed by law by reason of his conviction of the crime or of the offense specified therein. Such certificate may be limited to one or more enumerated disabilities or bars, or may relieve the individual of all disabilities and bars.

2. Notwithstanding any other provision of law, a conviction of a crime or of an offense specified in a certificate of good conduct shall not be deemed to be a conviction within the meaning of any provision of law that imposes, by reason of a conviction, a bar to any employment, a disability to exercise any right, or a disability to apply for or to receive any license, permit, or other authority or privilege covered by the certificate; and provided, however, that a conviction for a class A-I felony or a violent felony offense, as defined in subdivision one of section 70.02 of the penal law, shall impose a disability to apply for or receive a license or permit issued pursuant to section 400.00 of the penal law.

3. A certificate of good conduct shall not, however, in any way prevent any judicial administrative, licensing or other body, board or authority from considering the conviction specified therein in accordance with the provisions of article twenty-three-a of this chapter.

§ 703-b. Issuance of certificate of good conduct. 1. The department of corrections and community supervision shall have the power to issue a certificate of good conduct to any person previously convicted of a crime in this state, when the department is satisfied that:

(a) The applicant has conducted himself or herself in a manner warranting such issuance for a minimum period in accordance with the provisions of subdivision three of this section;

(b) The relief to be granted by the certificate is consistent with the rehabilitation of the applicant; and

(c) The relief to be granted is consistent with the public interest.

2. The department shall have the power to issue a certificate of good conduct to any person previously convicted of a crime in any other jurisdiction, when the department is satisfied that:

(a) The applicant has demonstrated that there exist specific facts and circumstances, and specific sections of New York state law that have an adverse impact on the applicant and warrant the application for relief to be made in New York; and

(b) The provisions of paragraphs (a), (b) and (c) of subdivision one of this section have been met.

3. The minimum period of good conduct by the individual referred to in paragraph (a) of subdivision one of this section, shall be as follows: where the most serious crime of which the individual was convicted is a misdemeanor, the minimum period of good conduct shall be one year; where the most serious crime of which the individual was convicted is a class C, D or E felony, the minimum period of good conduct shall be three years; and, where the most serious crime of which the individual was convicted is a class B or A felony, the minimum period of good conduct shall be five years. Criminal acts committed outside the state shall be classified as acts committed within the state based on the maximum sentence that could have been imposed based upon such conviction pursuant to the laws of such foreign jurisdiction. Such minimum period of good conduct by the individual shall be measured either from the date of the payment of any fine imposed upon him or her or the suspension of sentence, or from the date of his or her unrevoked release from custody by parole, commutation or termination of his or her sentence. The department shall have power and it shall be its duty to investigate all persons when such application is made and to grant or deny the same within a reasonable time after the making of the application.

4. Where the department has issued a certificate of good conduct, the department may at any time issue a new certificate enlarging the relief previously granted.

5. Any certificate of good conduct by the department to an individual who at time of the issuance of the certificate is under the department's supervision, shall be deemed to be a temporary certificate until such time as the individual is discharged from the department's supervision, and, while temporary, such certificate may be revoked by the department for violation of the conditions of community supervision. Revocation shall be upon notice to the releasee, who shall be accorded an opportunity to explain the violation prior to decision thereon. If the certificate is not so revoked, it shall become a permanent certificate upon expiration or termination of the department's jurisdiction over the individual.

§ 704. Effect of revocation; use of revoked certificate. 1. Where a certificate of relief from disabilities is deemed to be temporary and such certificate is revoked, disabilities and forfeitures thereby relieved shall be reinstated as of the date upon which the person to whom the certificate was issued receives written notice of such revocation. Any such person shall upon receipt of such notice surrender the certificate to the issuing court or board.

2. A person who knowingly uses or attempts to use, a revoked certificate of relief from disabilities in order to obtain or to exercise any right or privilege that he would not be entitled to obtain or to exercise without a valid certificate shall be guilty of a misdemeanor.

§ 705. Forms and filing. 1. All applications, certificates and orders of revocation necessary for the purposes of this article shall be upon forms prescribed pursuant to agreement among the state commissioner of corrections and community supervision, the chairman of the state board of parole and the administrator of the state judicial conference. Such forms relating to certificates of relief from disabilities shall be distributed by the office of probation and correctional alternatives and forms relating to certificates of good conduct shall be distributed by the commissioner of the department of corrections and community supervision.

2. Any court or department issuing or revoking any certificate pursuant to this article shall immediately file a copy of the certificate, or of the order of revocation, with the New York state identification and intelligence system.

§ 706. Certificate not to be deemed to be a pardon. Nothing contained in this article shall be deemed to alter or limit or affect the manner of applying for pardons to the governor, and no certificate issued hereunder shall be deemed or construed to be a pardon.

ARTICLE 23-A

LICENSURE AND EMPLOYMENT OF PERSONS PREVIOUSLY CONVICTED OF ONE OR MORE CRIMINAL OFFENSES

§ 750. Definitions. For the purposes of this article, the following terms shall have the following meanings:

(1) "Public agency" means the state or any local subdivision thereof, or any state or local department, agency, board or commission.

(2) "Private employer" means any person, company, corporation, labor

organization or association which employs ten or more persons.

(3) "Direct relationship" means that the nature of criminal conduct for which the person was convicted has a direct bearing on his fitness or ability to perform one or more of the duties or responsibilities necessarily related to the license, opportunity, or job in question.

(4) "License" means any certificate, license, permit or grant of permission required by the laws of this state, its political subdivisions or instrumentalities as a condition for the lawful practice of any occupation, employment, trade, vocation, business, or profession. Provided, however, that "license" shall not, for the purposes of this article, include any license or permit to own, possess, carry, or fire any explosive, pistol, handgun, rifle, shotgun, or other firearm.

(5) "Employment" means any occupation, vocation or employment, or any form of vocational or educational training. Provided, however, that "employment" shall not, for the purposes of this article, include membership in any law enforcement agency.

§ 751. Applicability. The provisions of this article shall apply to any application by any person for a license or employment at any public or private employer, who has previously been convicted of one or more criminal offenses in this state or in any other jurisdiction, and to any license or employment held by any person whose conviction of one or more criminal offenses in this state or in any other jurisdiction preceded such employment or granting of a license, except where a mandatory forfeiture, disability or bar to employment is imposed by law, and has not been removed by an executive pardon, certificate of relief from disabilities or certificate of good conduct. Nothing in this article shall be construed to affect any right an employer may have with respect to an intentional misrepresentation in connection with an application for employment made by a prospective employee or previously made by a current employee.

§ 752. Unfair discrimination against persons previously convicted of one or more criminal offenses prohibited. No application for any license or employment, and no employment or license held by an individual, to which the provisions of this article are applicable, shall be denied or acted upon adversely by reason of the individual's having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of "good moral character" when such finding is based upon the fact that the individual has previously been convicted of one or more criminal offenses, unless:

(1) there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought or held by the individual; or

(2) the issuance or continuation of the license or the granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

§ 753. Factors to be considered concerning a previous criminal conviction; presumption. 1. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall consider the following factors:

(a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.

(b) The specific duties and responsibilities necessarily related to the license or employment sought or held by the person.

(c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.

(d) The time which has elapsed since the occurrence of the criminal offense or offenses.

(e) The age of the person at the time of occurrence of the criminal offense or offenses.

(f) The seriousness of the offense or offenses.

(g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.

(h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

2. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall also give consideration to a certificate of relief from disabilities or a certificate of good conduct issued to the applicant, which certificate shall create a presumption of rehabilitation in regard to the offense or offenses specified therein.

§ 754. Written statement upon denial of license or employment. At the request of any person previously convicted of one or more criminal offenses who has been denied a license or employment, a public agency or private employer shall provide, within thirty days of a request, a written statement setting forth the reasons for such denial.

§ 755. Enforcement. 1. In relation to actions by public agencies, the provisions of this article shall be enforceable by a proceeding brought pursuant to article seventy-eight of the civil practice law and rules.

2. In relation to actions by private employers, the provisions of this article shall be enforceable by the division of human rights pursuant to the powers and procedures set forth in article fifteen of the executive law, and, concurrently, by the New York city commission on human rights.

ARTICLE 24

PROVISIONS APPLICABLE TO SENTENCES IMPOSED UNDER THE THE REVISED PENAL PLAN

§ 800. Applicability. The provisions of this article shall apply, to the exclusion of all other provisions of this chapter relating to good behavior allowances, where sentence has been imposed pursuant to the provisions of the penal law as enacted by chapter ten hundred thirty of the laws of nineteen hundred sixty-five, as amended, or where the sentence is a reformatory sentence of imprisonment. Matters not expressly covered herein or covered in such penal law shall be governed by such other provisions of law as may be applicable.

*** § 803. Good behavior allowances against indeterminate and determinate sentences.** 1. (a) Every person confined in an institution of the department or a facility in the department of mental hygiene serving an indeterminate or determinate sentence of imprisonment, except a person serving a sentence with a maximum term of life imprisonment, may receive time allowance against the term or maximum term of his or her sentence imposed by the court. Such allowances may be granted for good behavior and efficient and willing performance of duties assigned or progress and achievement in an assigned treatment program, and may be withheld, forfeited or canceled in whole or in part for bad behavior, violation of institutional rules or failure to perform properly in the duties or program assigned.

(b) A person serving an indeterminate sentence of imprisonment may receive time allowance against the maximum term of his or her sentence not to exceed one-third of the maximum term imposed by the court.

(c) A person serving a determinate sentence of imprisonment may receive time allowance against the term of his or her sentence not to exceed one-seventh of the term imposed by the court.

(d) (i) Except as provided in subparagraph (ii) of this paragraph, every person under the custody of the department or confined in a facility in the department of mental hygiene serving an indeterminate sentence of imprisonment with a minimum period of one year or more or a determinate sentence of imprisonment of one year or more imposed pursuant to section 70.70 or 70.71 of the penal law, may earn a merit time allowance.

(ii) Such merit time allowance shall not be available to any person serving an indeterminate sentence authorized for an A-I felony offense, other than an A-I felony offense defined in article two hundred twenty of the penal law, or any sentence imposed for a violent felony offense as defined in section 70.02 of the penal law, manslaughter in the second degree, vehicular manslaughter in the second degree, vehicular manslaughter in the first degree, criminally negligent homicide, an offense defined in article one hundred thirty of the penal law, incest, or an offense defined in article two hundred sixty-three of the penal law, or aggravated harassment of an employee by an incarcerated individual.

(iii) The merit time allowance credit against the minimum period of the indeterminate sentence shall be one-sixth of the minimum period imposed by the court except that such credit shall be one-third of the minimum period imposed by the court for an A-I felony offense defined in article two hundred twenty of the penal law. In the case of such a determinate sentence, in addition to the time allowance credit authorized by paragraph (c) of this subdivision, the merit time allowance credited against the term of the determinate sentence pursuant to this paragraph shall be one-seventh of the term imposed by the court.

(iv) Such merit time allowance may be granted when an incarcerated individual successfully participates in the work and treatment program assigned pursuant to section eight hundred five of this article and when such incarcerated individual obtains a general equivalency diploma, an alcohol and substance abuse treatment certificate, a vocational trade certificate following at least six months of vocational programming, at least eighteen credits in a program registered by the state education department from a degree-granting higher education institution or performs at least four hundred hours of service as part of a community work crew. The commissioner may designate additional programs and achievements for which merit time may be granted.

Such allowance shall be withheld for any serious disciplinary infraction or upon a judicial determination that the person, while an incarcerated individual, commenced or continued a civil action, proceeding or claim that was found to be frivolous as defined in subdivision (c) of section eight thousand three hundred three-a of the civil practice law and rules, or an order of a federal court pursuant to rule 11 of the federal rules of civil procedure imposing sanctions in an action commenced by a person, while an incarcerated individual, against a state agency, officer or employee.

(v) The provisions of this paragraph shall apply to persons in custody serving an indeterminate sentence on the effective date of this paragraph as well as to persons sentenced to an indeterminate sentence on and after the effective date of this paragraph and prior to September first, two thousand five and to persons sentenced to a determinate sentence prior to September first, two thousand eleven for a felony as defined in article two hundred twenty or two hundred twenty-one of the penal law.

2. If a person is serving more than one sentence, the authorized allowances may be granted separately against the term or maximum term of each sentence or, where consecutive sentences are involved, against the aggregate maximum term. Such allowances shall be calculated as follows:

(a) A person serving two or more indeterminate sentences which run concurrently may receive time allowance not to exceed one-third of the indeterminate sentence which has the longest unexpired time to run.

(b) A person serving two or more indeterminate sentences which run consecutively may receive time allowance not to exceed one-third of the aggregate maximum term.

(c) A person serving two or more determinate sentences which run concurrently may receive time allowance not to exceed one-seventh of the determinate sentence which has the longest unexpired time to run.

(d) A person serving two or more determinate sentences which run consecutively may receive time allowance not to exceed one-seventh of the aggregate maximum term.

(e) A person serving one or more indeterminate sentence and one or more determinate sentence which run concurrently may receive time allowance not to exceed one-third of the indeterminate sentence which has the longest unexpired term to run or one-seventh of the determinate sentence which has the longest unexpired time to run, whichever allowance is greater.

(f) A person serving one or more indeterminate sentence and one or more determinate sentence which run consecutively may receive time allowance not to exceed the sum of one-third of the maximum or aggregate maximum of the indeterminate sentence or sentences and one-seventh of the term or aggregate maximum of the determinate sentence or sentences.

2-a. If a person is serving more than one sentence, the authorized merit time allowances may be granted against the period or aggregate minimum period of the indeterminate sentence or sentences, or against the term or aggregate term of the determinate sentence or sentences, or where consecutive determinate and indeterminate sentences are involved, against the aggregate minimum period as calculated pursuant to subparagraph (iv) of paragraph (a) of subdivision one of section 70.40 of the penal law. Such allowances shall be calculated as follows:

(a) A person serving two or more indeterminate sentences which run concurrently may receive a merit time allowance not to exceed one-sixth of the minimum period of the indeterminate sentence imposed for an offense other than an A-I felony offense defined in article two hundred twenty of the penal law, or one-third of the minimum period of the indeterminate sentence imposed for an A-I felony offense defined in article two hundred twenty of the penal law, whichever allowance results in the longest unexpired time to run.

(b) A person serving two or more indeterminate sentences which run consecutively may receive a merit time allowance not to exceed the amount of one-third of the minimum or aggregate minimum period of the sentences imposed for an A-I felony offense defined in article two hundred twenty of the penal law, plus one-sixth of the minimum or aggregate minimum period of the sentences imposed for an offense other than such A-I felony offense.

(c) A person serving two or more determinate sentences for an offense defined in article two hundred twenty or two hundred twenty-one of the penal law which run concurrently may receive a merit time allowance not to exceed one-seventh of the term of the determinate sentence which has the longest unexpired time to run.

(d) A person serving two or more determinate sentences for an offense defined in article two hundred twenty or two hundred twenty-one of the penal law which run consecutively may receive a merit time allowance not to exceed one-seventh of the aggregate term of such determinate sentences.

(e) A person serving one or more indeterminate sentences and one or more determinate sentences for an offense defined in article two hundred twenty or two hundred twenty-one of the penal law which run concurrently may receive a merit time allowance not to exceed one-sixth of the minimum period of the indeterminate sentence imposed for an offense other than an A-I felony offense defined in article two hundred twenty of the penal law, one-third of the minimum period of the indeterminate sentence imposed for an A-I felony offense defined in article two hundred twenty of the penal law, or one-seventh of the term of the determinate sentence, whichever allowance results in the largest unexpired time to run.

(f) A person serving one or more indeterminate sentences and one or more determinate sentences which run consecutively may receive a merit time allowance not to exceed the sum of one-sixth of the minimum or aggregate minimum period of the indeterminate sentence or sentences imposed for an offense other than an A-I felony offense defined in article two hundred twenty of the penal law, one-third of the minimum or aggregate minimum period of the indeterminate sentence or sentences imposed for an A-I felony offense defined in article two hundred twenty of the penal law and one-seventh of the term or aggregate term of the determinate sentence or sentences.

(g) The provisions of this subdivision shall apply to persons in custody serving an indeterminate sentence on the effective date of this subdivision as well as to persons sentenced to an indeterminate sentence on and after the effective date of this subdivision and prior to September first, two thousand five and to persons sentenced to a determinate sentence prior to September first, two thousand eleven for a felony as defined in article two hundred twenty or two hundred twenty-one of the penal law.

** 2-b. Notwithstanding the foregoing, if a person is serving more than one indeterminate sentence, at least one of which is imposed for a class A-I felony offense defined in article two hundred twenty of the penal law, the authorized merit time allowance granted pursuant to paragraph (d) of subdivision one of this section shall be calculated as follows:

(a) In the event a person is serving two or more indeterminate sentences with different minimum periods which run concurrently, the merit time allowance shall be based upon the sentence with the longest unexpired minimum period. If the sentence with the longest unexpired minimum period was imposed for a class A-I felony, the merit time credit shall be one-third of such sentence's minimum period; if such sentence was imposed for an offense other than a class A-I felony, such merit time credit shall be one-sixth of such sentence's minimum period. Provided, however, that where the minimum period of any other concurrent indeterminate sentence is greater than such reduced minimum period, the minimum period of such other concurrent indeterminate sentence shall also be reduced but only to the extent that the minimum period of such other concurrent sentence, as so reduced, is equal to the reduced minimum period of such sentence with the longest unexpired minimum period to run.

(b) A person serving two or more indeterminate sentences with the same minimum periods which run concurrently, and no concurrent indeterminate sentence with any greater minimum period, shall have the minimum period of each such sentence reduced in the amount of one-third of such minimum period if all such sentences were imposed for a class A-I felony.

(c) A person serving two or more indeterminate sentences that run consecutively shall have the aggregate minimum period of such sentences reduced in the amount of one-third of such aggregate minimum period of the sentences imposed for a class A-I felony, plus one-sixth of such aggregate minimum period of the sentences imposed for an offense other than a class A-I felony.

** NB Repealed September 1, 2027

3. The commissioner of corrections and community supervision shall promulgate rules and regulations for the granting, withholding, forfeiture, cancellation and restoration of allowances authorized by this section in accordance with the criteria herein specified. Such rules and regulations shall include provisions designating the person or committee in each correctional institution delegated to make discretionary determinations with respect to the allowances, the books

and records to be kept, and a procedure for review of the institutional determinations by the commissioner.

4. No person shall have the right to demand or require the allowances authorized by this section. The decision of the commissioner of corrections and community supervision as to the granting, withholding, forfeiture, cancellation or restoration of such allowances shall be final and shall not be reviewable if made in accordance with law.

5. Time allowances granted prior to any release to community supervision shall be forfeited and shall not be restored if the released person is returned to an institution under the jurisdiction of the state department of corrections and community supervision for violation of community supervision or by reason of a conviction for a crime committed while on community supervision. A person who is so returned may, however, subsequently receive time allowances against the remaining portion of his or her term, maximum term or aggregate maximum term pursuant to this section and provided such remaining portion of his or her term, maximum term, or aggregate maximum term is more than one year.

6. Upon commencement of an indeterminate or a determinate sentence the provisions of this section shall be furnished to the person serving the sentence and the meaning of same shall be fully explained to him by a person designated by the commissioner to perform such duty.

* NB Effective until September 1, 2027

* § 803. Good behavior allowances against indeterminate sentences. 1. (a) Every person confined in an institution of the department or a facility in the department of mental hygiene serving an indeterminate sentence of imprisonment, except a person serving a sentence with a maximum term of life imprisonment, may receive time allowance against the maximum term or period of his sentence not to exceed in the aggregate one-third of the term or period imposed by the court. Such allowances may be granted for good behavior and efficient and willing performance of duties assigned or progress and achievement in an assigned treatment program, and may be withheld, forfeited or canceled in whole or in part for bad behavior, violation of institutional rules or failure to perform properly in the duties or program assigned.

(d) (i) Except as provided in subparagraph (ii) of this paragraph, every person under the custody of the department or confined in a facility in the department of mental hygiene serving an indeterminate sentence of imprisonment with a minimum period of one year or more or a determinate sentence of imprisonment of one year or more imposed pursuant to section 70.70 or 70.71 of the penal law, may earn a merit time allowance.

(ii) Such merit time allowance shall not be available to any person serving an indeterminate sentence authorized for an A-I felony offense, other than an A-I felony offense defined in article two hundred twenty of the penal law, or any sentence imposed for a violent felony offense as defined in section 70.02 of the penal law, manslaughter in the second degree, vehicular manslaughter in the second degree, vehicular manslaughter in the first degree, criminally negligent homicide, an offense defined in article one hundred thirty of the penal law, incest, or an offense defined in article two hundred sixty-three of the penal law, or aggravated harassment of an employee by an incarcerated individual.

(iii) The merit time allowance credit against the minimum period of the indeterminate sentence shall be one-sixth of the minimum period imposed by the court except that such credit shall be one-third of the minimum period imposed by the court for an A-I felony offense defined in article two hundred twenty of the penal law. In the case of such a determinate sentence, in addition to the time allowance credit authorized by paragraph (c) of this subdivision, the merit time allowance credited against the term of the determinate sentence pursuant to this paragraph shall be one-seventh of the term imposed by the court.

(iv) Such merit time allowance may be granted when an incarcerated individual successfully participates in the work and treatment program assigned pursuant to section eight hundred five of this article and when such incarcerated individual obtains a general equivalency diploma, an alcohol and substance abuse treatment certificate, a vocational trade certificate following at least six months of vocational programming, at least eighteen credits in a program registered by the state education department from a degree-granting higher education institution or performs at least four hundred hours of service as part of a community work crew.

Such allowance shall be withheld for any serious disciplinary infraction or upon a judicial determination that the person, while an incarcerated individual, commenced or continued a civil action, proceeding or claim that was found to be frivolous as defined in subdivision (c) of section eight thousand three hundred three-a of the civil practice law and rules, or an order of a federal court pursuant to rule 11 of the federal rules of civil procedure imposing sanctions in an action commenced by a person, while an incarcerated individual, against a state agency, officer or employee.

(v) The provisions of this paragraph shall apply to persons in custody serving an indeterminate sentence on the effective date of this paragraph as well as to persons sentenced to an indeterminate sentence on and after the effective date of this paragraph and prior to September first, two thousand five and to persons sentenced to a determinate sentence prior to September first, two thousand eleven for a felony as defined in article two hundred twenty or two hundred twenty-one of the penal law.

1-a. A person serving a determinate sentence imposed pursuant to section 70.70 or 70.71 of the penal law may receive a time allowance against the term of his or her sentence not to exceed one-seventh of the term imposed by the court.

2. If a person is serving more than one sentence, the authorized allowances may be granted separately against the maximum term of each sentence or, where consecutive sentences are involved, against the aggregate maximum term. In no case, however, shall the total of all allowances granted to any such person under this section exceed one-third of the time he would be required to serve, computed without regard to this section.

2-a. If a person is serving more than one sentence, the authorized merit time allowances may be granted against the period or aggregate minimum period of the indeterminate sentence or sentences, or against the term or aggregate term of the determinate sentence or sentences, or where consecutive determinate and indeterminate sentences are involved, against the aggregate minimum period as calculated pursuant to subparagraph (iv) of paragraph (a) of subdivision one of section 70.40 of the penal law. Such allowances shall be calculated as follows:

(a) A person serving two or more indeterminate sentences which run concurrently may receive a merit time allowance not to exceed one-sixth of the minimum period of the indeterminate sentence imposed for an offense other than an A-I felony offense defined in article two hundred twenty of the penal law, or one-third of the minimum period of the indeterminate sentence imposed for an A-I felony offense defined in article two hundred twenty of the penal law, whichever allowance results in the longest unexpired time to run.

(b) A person serving two or more indeterminate sentences which run consecutively may receive a merit time allowance not to exceed the amount of one-third of the minimum or aggregate minimum period of the sentences imposed for an A-I felony offense defined in article two hundred twenty of the penal law, plus one-sixth of the minimum or aggregate minimum period of the sentences imposed for an offense other than such A-I felony offense.

(c) A person serving two or more determinate sentences for an offense defined in article two hundred twenty or two hundred twenty-one of the penal law which run concurrently may receive a merit time allowance not to exceed one-seventh of the term of the determinate sentence which has the longest unexpired time to run.

(d) A person serving two or more determinate sentences for an offense defined in article two hundred twenty or two hundred twenty-one of the penal law which run consecutively may receive a merit time allowance not to exceed one-seventh of the aggregate term of such determinate sentences.

(e) A person serving one or more indeterminate sentences and one or more determinate sentences for an offense defined in article two hundred twenty or two hundred twenty-one of the penal law which run concurrently may receive a merit time allowance not to exceed one-sixth of the minimum period of the indeterminate sentence imposed for an offense other than an A-I felony offense defined in article two hundred twenty of the penal law, one-third of the minimum period of the indeterminate sentence imposed for an A-I felony offense defined in article two hundred twenty of the penal law, or one-seventh of the term of the determinate sentence, whichever allowance results in the largest unexpired time to run.

(f) A person serving one or more indeterminate sentences and one or more determinate sentences which run consecutively may receive a merit time allowance not to exceed the sum of one-sixth of the minimum or aggregate minimum period of the indeterminate sentence or sentences imposed for an offense other than an A-I felony offense defined in article two hundred twenty of the penal law, one-third of the minimum or aggregate minimum period of the indeterminate sentence or sentences imposed for an A-I felony offense defined in article two hundred twenty of the penal law and one-seventh of the term or aggregate term of the determinate sentence or sentences.

(g) The provisions of this subdivision shall apply to persons in custody serving an indeterminate sentence on the effective date of this subdivision as well as to persons sentenced to an indeterminate sentence on and after the effective date of this subdivision and prior to September first, two thousand five and to persons sentenced to a determinate sentence prior to September first, two thousand eleven for a felony as defined in article two hundred twenty or two hundred twenty-one of the penal law.

3. The commissioner of corrections and community supervision shall promulgate rules and regulations for the granting, withholding, forfeiture, cancellation and restoration of allowances authorized by this section in accordance with the criteria herein specified. Such rules and regulations shall include provisions designating the person or committee in each correctional institution delegated to make discretionary determinations with respect to the allowances, the books and records to be kept, and a procedure for review of the institutional determinations by the commissioner.

4. No person shall have the right to demand or require the allowances authorized by this section. The decision of the commissioner of corrections and community supervision as to the granting, withholding, forfeiture, cancellation or restoration of such allowances shall be final and shall not be reviewable if made in accordance with law.

5. Time allowances granted prior to any release to community supervision shall be forfeited and shall not be restored if the released person is returned to an institution under the jurisdiction of the state department of corrections and community supervision for violation of community supervision or by reason of a conviction for a crime committed while on community supervision. A person who is so returned may, however, subsequently receive time allowances against the remaining portion of his maximum or aggregate maximum term or period not to exceed in the aggregate one-third of such portion provided such remaining portion of his or her maximum or aggregate maximum term or period is more than one year.

6. Upon commencement of an indeterminate sentence the provisions of this section shall be furnished to the person serving the sentence and the meaning of same shall be fully explained to him by a person designated by the commissioner to perform such duty.
* NB Effective September 1, 2027

§ 803-a. Certain calculations. Notwithstanding the provisions of any other law, no merit time allowance accrued, earned or credited to any person, pursuant to any existing or former section eight hundred three of this article, while in the custody of the commissioner, shall be withdrawn, cancelled, forfeited or otherwise lost by virtue of the sunset or expiration of any provision of law.

§ 803-b. Limited credit time allowances for incarcerated individuals serving indeterminate or determinate sentences imposed for specified offenses. 1. Definitions. As used in this section the following terms shall have the following meanings:
(a) "eligible offender" means a person under the custody of the department or confined in a facility in the department of mental hygiene, other than a person who is subject to a sentence imposed for murder in the first degree as defined in section 125.27 of the penal law, an offense defined in article one hundred thirty of such law, or an attempt or a conspiracy to commit any such offense, who is otherwise

subject to:

(i) an indeterminate sentence imposed for any class A-I felony offense other than criminal possession of a controlled substance in the first degree as defined in section 220.21 of the penal law or criminal sale of a controlled substance in the first degree as defined in section 220.43 of such law or an attempt or a conspiracy to commit such controlled substance offense; or

(ii) an indeterminate or determinate sentence imposed for an offense listed in subdivision one of section 70.02 of the penal law; or

(iii) an indeterminate or determinate sentence imposed for an offense defined in article one hundred twenty-five of the penal law.

(b) "limited credit time benefit" means:

(i) in the case of an eligible offender who is subject to an indeterminate sentence with a maximum term of life imprisonment, such offender shall be eligible for release six months before the completion of the controlling minimum period of imprisonment as defined by subdivision one of section 70.40 of the penal law; or

(ii) (A) in the case of an eligible offender who is not subject to an indeterminate sentence with a maximum term of life imprisonment, such offender shall be eligible for conditional release six months earlier than as provided by paragraph (b) of subdivision one of section 70.40 of the penal law, provided that the department determines such offender has earned the full amount of good time authorized by section eight hundred three of this article; the withholding of any good behavior time credit by the department shall render an incarcerated individual ineligible for the credit defined herein;

(B) in the event the limited credit time benefit defined herein causes such conditional release date to precede the parole eligibility date as calculated pursuant to subdivision one of section 70.40 of the penal law, a limited credit time benefit shall also be applied to the parole eligibility date, but only to the extent necessary to cause such parole eligibility date to be the same date as the conditional release date;

(C) an incarcerated individual shall not be eligible for the credit defined herein if he or she is returned to the department pursuant to a revocation of presumptive release, parole, conditional release, or post-release supervision and has not been sentenced to an additional indeterminate or determinate term of imprisonment.

(iii) Regardless of the number of sentences to which an eligible offender is subject, the limited credit time benefit authorized pursuant to this section shall be limited to a single six-month credit applied to such person's parole eligibility date pursuant to subparagraph (i) of this paragraph or to such person's conditional release date pursuant to subparagraph (ii) of this paragraph. Except as provided in clause (B) of subparagraph (ii) of this paragraph, the limited credit time benefit authorized pursuant to this section shall not be applied to an eligible offender's parole eligibility date and conditional release date.

(c) "significant programmatic accomplishment" means that the incarcerated individual:

(i) participates in no less than two years of college programming; or

(ii) obtains an associate degree, bachelor's degree, master's degree or doctoral degree by completing a registered program from a New York state degree-granting institution, or a program offered by an out-of-state institution of higher education authorized to offer post-secondary distance education in New York state pursuant to applicable rules and regulations promulgated by the education department of the state of New York; or

(iii) successfully participates as an incarcerated individual program associate for no less than two years; or

(iv) receives a certification from the state department of labor for his or her successful participation in an apprenticeship program; or

(v) successfully works as an incarcerated individual hospice aid for a period of no less than two years; or

(vi) successfully works in the division of correctional industries' optical program for no less than two years and receives a certification as an optician from the American board of opticianry; or

(vii) receives an asbestos handling certificate from the department of labor upon successful completion of the training program and then works in the division of correctional industries' asbestos abatement program as a hazardous materials removal worker or group leader for no less than eighteen months; or

(viii) successfully completes the course curriculum and passes the minimum competency screening process performance examination for sign language interpreter, and then works as a sign language interpreter for deaf incarcerated individuals for no less than one year; or

(ix) successfully works in the puppies behind bars program for a period of no less than two years; or

(x) successfully participates in a vocational culinary arts program for a period of no less than two years and earns a servsafe certificate that is recognized by the national restaurant association; or

(xi) successfully completes the four hundred ninety hour training program while assigned to a department of motor vehicles call center, and continues to work at such call center for an additional twenty-one months; or

(xii) receives a certificate from the food production center in an assigned position following the completion of no less than eight hundred hours of work in such position, and continues to work for an additional eighteen months at the food production center; or

(xiii) successfully completes a program of not less than eighteen months as established by the commissioner.

(d) "serious disciplinary infraction" or "overall poor institutional record" shall be defined in regulations promulgated by the commissioner and need not be the same as the regulations promulgated for the meaning of serious disciplinary infraction pursuant to paragraph (d) of subdivision one of section eight hundred three of this article.

(e) "disqualifying judicial determination" means a judicial determination that the person, while an incarcerated individual, commenced or continued a civil action or proceeding or claim that was found to be frivolous as defined in subdivision (c) of section eight thousand three hundred three-a of the civil practice law and rules, or an order of a federal court pursuant to rule 11 of the federal rules of civil procedure imposing sanctions in an action commenced by a person while an incarcerated individual against a state agency, officer or employee.

2. Every eligible offender under the custody of the department or confined in a facility in the department of mental hygiene may earn a limited credit time allowance if such offender successfully participates in the work and treatment program assigned pursuant to section eight hundred five of this article and:

(a) successfully completes one or more significant programmatic accomplishments; and

(b) has not committed a serious disciplinary infraction or maintained an overall negative institutional record as defined in rules and regulations promulgated by the commissioner; and

(c) has not received a disqualifying judicial determination.

3. No person shall have the right to demand or require the credit authorized by this section. The commissioner may revoke at any time such credit for any disciplinary infraction committed by the incarcerated individual or for any failure to continue to participate successfully in any assigned work and treatment program after the certificate of earned eligibility has been awarded. Any action by the commissioner pursuant to this section shall be deemed a judicial function and shall not be reviewable if done in accordance with law.

§ 804. Good behavior allowances against definite sentences. 1. Every person confined in an institution serving a definite sentence of imprisonment may receive time allowances as discretionary reductions of the term of his sentence not to exceed in the aggregate one-third of the term imposed by the court. Such allowances may be granted for good behavior and efficient and willing performance of duties assigned or progress and achievement in an assigned treatment program, and may be withheld, forfeited or cancelled in whole or in part for bad behavior, violation of institutional rules or failure to perform properly in the duties or program assigned.

2. If a person is serving more than one sentence, the authorized allowances may be granted separately against the term of each sentence or, where consecutive sentences are involved, against the aggregate term. Allowances based upon sentences of less than one month may be granted, and in such case the maximum allowance shall be one day for every three days of the sentence. In no case, however, shall the total of all allowances granted to any such person exceed one-third of the time he would be required to serve, computed without regard to this section.

3. No person shall have the right to demand or require the allowances

authorized by this section. The decision of the sheriff, superintendent, warden or other person in charge of the institution, or where such institution is under the jurisdiction of a county or city department the decision of the head of such department, as to the granting, withholding, forfeiture, cancellation or restoration of such allowances shall be final and shall not be reviewable if made in accordance with law.

4. A person who has earned a reduction of sentence pursuant to this section and who has been conditionally released under subdivision two of section 70.40 of the penal law shall not forfeit such reduction by reason of conduct causing his return to the institution. Provided, nevertheless, that such reduction may be forfeited by reason of subsequent conduct while serving the remainder of his term.

5. The state commission of correction shall promulgate record keeping rules and regulations for the granting, withholding, forfeiture, cancellation and restoration of allowances authorized by this section.

6. Notwithstanding anything to the contrary in this section, in any case where a person is serving a definite sentence in an institution under the jurisdiction of the state department of corrections and community supervision, subdivisions three and four of section eight hundred three of this chapter shall apply.

7. Upon commencement of any definite sentence the provisions of this section shall be furnished to the person serving the sentence and the meaning of same shall be fully explained to him by an officer designated in the regulation to perform such duty.

§ 804-a. Good behavior allowances for certain civil commitments. 1. Every person confined in an institution serving a civil commitment for a fixed period of time, whose release is not conditional upon any act within his power to perform, may receive time allowances as discretionary reductions of the term of his commitment not to exceed, in the aggregate, one-third of the term imposed by the court. Such allowances may be granted for good behavior and efficient and willing performance of duties assigned or progress and achievement in an assigned treatment program, and may be withheld, forfeited or cancelled in whole or in part for bad behavior, violation of institutional rules or failure to perform properly in the duties or program assigned.

2. Allowances based upon commitments of less than one month may be granted, and in such case the maximum allowances shall be one day for every three days of the commitment. In no case, however, shall the total of all allowances granted to any such person exceed one-third of the time he would be required to serve, computed without regard to this section.

3. No person shall have the right to demand or require the allowances authorized by this section. The decision of the sheriff, superintendent, warden or other person in charge of the institution, or where such institution is under the jurisdiction of a county or city department the decision of the head of such department, as to the granting, withholding, forfeiture, cancellation, or restoration of such allowances shall be final and shall not be reviewable if made in accordance with law.

4. The state commission of correction shall promulgate record keeping rules and regulations for the granting, withholding, forfeiture, cancellation and restoration of allowances authorized by this section.

5. Upon commencement of any civil commitment as described in subdivision one of this section, the provisions of this section shall be furnished to the person serving the commitment and the meaning of same shall be fully explained to him by an officer designated in the regulation to perform such duty.

*** § 805. Earned eligibility program.** Persons committed to the custody of the department under an indeterminate or determinate sentence of imprisonment shall be assigned a work and treatment program as soon as practicable. No earlier than two months prior to the incarcerated individual's eligibility to be paroled pursuant to subdivision one of section 70.40 of the penal law, the commissioner shall review the incarcerated individual's institutional record to determine whether he or she has complied with the assigned program. If the commissioner determines that the incarcerated individual has successfully participated in the program he or she may issue the incarcerated individual a certificate of earned eligibility. Notwithstanding any other provision of law, an incarcerated individual who is serving a sentence with a minimum term of not more than eight years and who has been issued a certificate of earned eligibility, shall be granted parole release at the expiration of his or her minimum term or as authorized by subdivision four of section eight hundred sixty-seven of this chapter unless the board of parole determines that there is a reasonable probability that, if such incarcerated individual is released, he or she will not live and remain at liberty without violating the law and that his or her release is not compatible with the welfare of society. Any action by the commissioner pursuant to this section shall be deemed a judicial function and shall not be reviewable if done in accordance with law.

* NB Effective until September 1, 2027

* § 805. Earned eligibility program. Persons committed to the custody of the department under an indeterminate sentence of imprisonment shall be assigned a work and treatment program as soon as practicable. No earlier than two months prior to the expiration of an incarcerated individual's minimum period of imprisonment, the commissioner shall review the incarcerated individual's institutional record to determine whether he or she has complied with the assigned program. If the commissioner determines that the incarcerated individual has successfully participated in the program he or she may issue the incarcerated individual a certificate of earned eligibility. Notwithstanding any other provision of law, an incarcerated individual who is serving a sentence with a minimum term of not more than six years and who has been issued a certificate of earned eligibility, shall be granted parole release at the expiration of his or her minimum term or as authorized by subdivision four of section eight hundred sixty-seven unless the board of parole determines that there is a reasonable probability that, if such incarcerated individual is released, he or she

will not live and remain at liberty without violating the law and that his or her release is not compatible with the welfare of society. Any action by the commissioner pursuant to this section shall be deemed a judicial function and shall not be reviewable if done in accordance with law.

* NB Effective and expires September 1, 2027

*** § 806. Presumptive release program for nonviolent incarcerated individuals.** 1. Notwithstanding any other provision of law to the contrary and except as provided in subdivision two of this section, an incarcerated individual who has been awarded a certificate of earned eligibility by the commissioner as set forth in section eight hundred five of this article may be entitled to presumptive release at the expiration of the minimum or aggregate minimum period of his or her indeterminate term of imprisonment, provided that:

(i) the incarcerated individual has not been convicted previously of, nor is presently serving a sentence imposed for a class A-I felony, a violent felony offense as defined in section 70.02 of the penal law, manslaughter in the second degree, vehicular manslaughter in the second degree, vehicular manslaughter in the first degree, criminally negligent homicide, an offense defined in article one hundred thirty of the penal law, incest, or an offense defined in article two hundred sixty-three of the penal law,

(ii) the incarcerated individual has not committed any serious disciplinary infraction, and

(iii) there has been no judicial determination that the person while an incarcerated individual commenced or continued a civil action, proceeding or claim that was found to be frivolous as defined in subdivision (c) of section eight thousand three hundred three-a of the civil practice law and rules, or an order has not been issued by a federal court pursuant to rule 11 of the federal rules of civil procedure imposing sanctions in an action commenced by the incarcerated individual against a state agency, officer or employee.

2. In the case of an incarcerated individual who meets the criteria set forth in subdivision one of this section and who also meets the

criteria for merit time as provided for in paragraph (d) of subdivision one of section eight hundred three of this article, such incarcerated individual may be entitled to presumptive release, as provided in this section, at the expiration of five-sixths of the minimum or aggregate minimum period of his or her indeterminate term of imprisonment.

3. Any incarcerated individual eligible for presumptive release pursuant to this section shall be required to apply for such release pursuant to section two hundred six of this chapter.

4. The commissioner shall promulgate rules and regulations for the granting, withholding, cancellation and recission of presumptive release authorized by this section in accordance with law.

5. No person shall have the right to demand or require presumptive release authorized by this section. The commissioner may revoke at any time an incarcerated individual's scheduled presumptive release pursuant to this section for any disciplinary infraction committed by the incarcerated individual or for any failure to continue to participate successfully in any assigned work and treatment program after the certificate of earned eligibility has been awarded. The commissioner may deny presumptive release to any incarcerated individual whenever the commissioner determines that such release may not be consistent with the safety of the community or the welfare of the incarcerated individual. Any action by the commissioner pursuant to this section shall be deemed a judicial function and shall not be reviewable if done in accordance with law.

6. Any eligible incarcerated individual who is not released pursuant to subdivision one or two of this section shall be considered for discretionary release on parole pursuant to the provisions of section eight hundred five of this article or section two hundred fifty-nine-i of the executive law, whichever is applicable.

7. Any reference to parole and conditional release in this chapter shall also be deemed to include presumptive release.

* NB Repealed September 1, 2027

ARTICLE 26

*** TEMPORARY RELEASE PROGRAMS FOR STATE CORRECTIONAL INSTITUTIONS**

* NB Effective until September 1, 2027

* WORK RELEASE PROGRAM FOR STATE CORRECTIONAL INSTITUTIONS

* NB Effective September 1, 2027

*** § 851. Definitions.** As used in this article the following terms have the following meanings:

1. "Institution" means any institution under the jurisdiction of the state department of corrections and community supervision or an institution designated by the commissioner pursuant to section seventy-two-a of this chapter.

2. "Eligible incarcerated individual" means: a person confined in an institution who is eligible for release on parole or who will become eligible for release on parole or conditional release within two years. Provided, however, that a person under sentence for an offense defined in paragraphs (a) and (b) of subdivision one of section 70.02 of the penal law, where such offense involved the use or threatened use of a deadly weapon or dangerous instrument shall not be eligible to

participate in a work release program until he or she is eligible for release on parole or who will be eligible for release on parole or conditional release within eighteen months. Provided, further, however, that a person under a determinate sentence as a second felony drug offender for a class B felony offense defined in article two hundred twenty of the penal law, who was sentenced pursuant to section 70.70 of such law, shall not be eligible to participate in a temporary release program until the time served under imprisonment for his or her determinate sentence, including any jail time credited pursuant to the provisions of article seventy of the penal law, shall be at least eighteen months. In the case of a person serving an indeterminate sentence of imprisonment imposed pursuant to the penal law in effect after September one, nineteen hundred sixty-seven, for the purposes of this article parole eligibility shall be upon the expiration of the minimum period of imprisonment fixed by the court or where the court has not fixed any period, after service of the minimum period fixed by the state board of parole. If an incarcerated individual is denied release on parole, such incarcerated individual shall not be deemed an eligible incarcerated individual until he or she is within two years of his or her next scheduled appearance before the state parole board. In any case where an incarcerated individual is denied release on parole while participating in a temporary release program, the department shall review the status of the incarcerated individual to determine if continued placement in the program is appropriate. No person convicted of any escape or absconding offense defined in article two hundred five of the penal law shall be eligible for temporary release. Further, no person under sentence for aggravated harassment of an employee by an incarcerated individual as defined in section 240.32 of the penal law for, any homicide offense defined in article one hundred twenty-five of the penal law, for any sex offense defined in article one hundred thirty of the penal law, or for an offense defined in section 255.25, 255.26 or 255.27 of the penal law shall be eligible to participate in a work release program as defined in subdivision three of this section. Nor shall any person under sentence for any sex offense defined in article one hundred thirty of the penal law be eligible to participate in a community services program as defined in subdivision five of this section. Notwithstanding the foregoing, no person who is an otherwise eligible incarcerated individual who is under sentence for a crime involving: (a) infliction of serious physical injury upon another as defined in the penal law or (b) any other offense involving the use or threatened use of a deadly weapon may participate in a temporary release program without the written approval of the commissioner. The commissioner shall promulgate regulations giving direction to the temporary release committee at each institution in order to aid such committees in carrying out this mandate.

The governor, by executive order, may exclude or limit the participation of any class of otherwise eligible incarcerated individuals from participation in a temporary release program. Nothing in this paragraph shall be construed to affect either the validity of any executive order previously issued limiting the participation of otherwise eligible incarcerated individuals in such program or the authority of the commissioner to impose appropriate regulations limiting such participation.

2-a. Notwithstanding subdivision two of this section, the term "eligible incarcerated individual" shall also include a person confined in an institution who is eligible for release on parole or who will become eligible for release on parole or conditional release within two years, and who was convicted of a homicide offense as defined in article one hundred twenty-five of the penal law or an assault offense defined in article one hundred twenty of the penal law, and who can demonstrate to the commissioner that: (a) the victim of such homicide or assault was a member of the incarcerated individual's immediate family as that term is defined in section 120.40 of the penal law or had a child in common with the incarcerated individual; (b) the incarcerated individual was subjected to substantial physical, sexual or psychological abuse committed by the victim of such homicide or assault; and (c) such abuse was a substantial factor in causing the incarcerated individual to commit such homicide or assault. With respect to an incarcerated individual's claim that he or she was subjected to substantial physical, sexual or psychological abuse committed by the victim, such demonstration shall include corroborative material that may include, but is not limited to, witness statements, social services records, hospital records, law enforcement records and a showing based in part on documentation prepared at or near the time of the commission of the offense or the prosecution thereof tending to support the incarcerated individual's claim. Prior to making a determination under this subdivision, the commissioner is required to request and take into consideration the opinion of the district attorney who prosecuted the underlying homicide or assault offense and the opinion of the sentencing court. If such opinions are received within forty-five days of the request, the commissioner shall take them into consideration. If such opinions are not so received, the commissioner may proceed with the determination. Any action by the commissioner pursuant to this subdivision shall be deemed a judicial function and shall not be reviewable in any court.

2-b. When calculating in advance the date on which a person is or will be eligible for release on parole or conditional release, for purposes of determining eligibility for temporary release or for placement at an alcohol and substance abuse treatment correctional annex, the commissioner shall consider and include credit for all potential credits and reductions including but not limited to merit time and good behavior allowances. Nothing in this subdivision shall be interpreted as precluding the consideration and inclusion of credit for all potential credits and reductions including, but not limited to, merit time and good behavior allowances when calculating in advance for any other purpose the date on which a person is or will be eligible for release on parole or conditional release.

3. "Work release program" means a program under which eligible incarcerated individuals may be granted the privilege of leaving the premises of an institution for a period not exceeding fourteen hours in any day for the purpose of on-the-job training or employment, or for any matter necessary to the furtherance of any such purposes. No person shall be released into a work release program unless prior to release such person has a reasonable assurance of a job training program or employment. If after release, such person ceases to be employed or ceases to participate in the training program, the incarcerated individual's privilege to participate in such work release program may

be revoked in accordance with rules and regulations promulgated by the commissioner.

4. "Furlough program" means a program under which eligible incarcerated individuals may be granted the privilege of leaving the premises of an institution for a period not exceeding seven days for the purpose of seeking employment, maintaining family ties, solving family problems, seeking post-release housing, attending a short-term educational or vocational training course, or for any matter necessary to the furtherance of any such purposes.

5. "Community services program" means a program under which eligible incarcerated individuals may be granted the privilege of leaving the premises of an institution for a period not exceeding fourteen hours in any day for the purpose of participation in religious services, volunteer work, or athletic events, or for any matter necessary to the furtherance of any such purposes.

6. "Leave of absence" means a privilege granted to an incarcerated individual, who need not be an "eligible incarcerated individual," to leave the premises of an institution for the period of time necessary:

(a) to visit his or her spouse, child, brother, sister, grandchild, parent, grandparent or ancestral aunt or uncle during his or her last illness if death appears to be imminent;

(b) to attend the funeral of such individual;

(c) to undergo surgery or to receive medical or dental treatment not available in the correctional institution only if deemed absolutely necessary to the health and well-being of the incarcerated individual and whose approval is granted by the commissioner or his or her designated representative.

7. "Educational leave" means a privilege granted to an eligible incarcerated individual to leave the premises of an institution for a period not exceeding fourteen hours in any day for the purpose of education or vocational training, or for any matter necessary to the furtherance of any such purposes.

8. "Industrial training leave" means a privilege granted to an eligible incarcerated individual to leave the premises of an institution for a period not exceeding fourteen hours in any day for the purpose of participating in an industrial training program, or for any matter necessary to the furtherance of any such purpose.

9. "Temporary release program" means a "work release program," a "furlough program," a "community services program," an "industrial training leave," an "educational leave," or a "leave of absence."

10. "Extended bounds of confinement" means the area in which an incarcerated individual participating in a temporary release program may travel, the routes he or she is permitted to use, the places he or she is authorized to visit, and the hours, days, or specially defined period during which he or she is permitted to be absent from the premises of the institution.

11. "Temporary release committee" means the body of persons, which may include members of the public, appointed pursuant to regulations promulgated by the commissioner to serve at the pleasure of the commissioner for the purpose of formulating, modifying and revoking temporary release programs at an institution.

12. "Superintendent" means the person in charge of an institution, by whatever title he or she may be known.

* NB Effective until September 1, 2027

* § 851. Definitions. As used in this article the following terms have the following meanings:

1. "Institution" means any institution under the jurisdiction of the state department of corrections and community supervision.

2. "Eligible incarcerated individual" means: a person confined in an institution who is eligible for release on parole or who will become eligible for release on parole or conditional release within two years. Provided, that a person under a determinate sentence as a second felony drug offender for a class B felony offense defined in article two

hundred twenty of the penal law, who was sentenced pursuant to section 70.70 of such law, shall not be eligible to participate in a temporary release program until the time served under imprisonment for his or her determinate sentence, including any jail time credited pursuant to the provisions of article seventy of the penal law, shall be at least eighteen months. In the case of a person serving an indeterminate sentence of imprisonment imposed pursuant to the penal law in effect after September one, nineteen hundred sixty-seven, for the purposes of this article parole eligibility shall be upon the expiration of the minimum period of imprisonment fixed by the court or where the court has not fixed any period, after service of the minimum period fixed by the state board of parole. If an incarcerated individual is denied release on parole, such incarcerated individual shall not be deemed an eligible incarcerated individual until he or she is within two years of his or her next scheduled appearance before the state parole board. In any case where an incarcerated individual is denied release on parole while participating in a temporary release program, the department shall review the status of the incarcerated individual to determine if continued placement in the program is appropriate. No person convicted of any escape or absconding offense defined in article two hundred five of the penal law shall be eligible for temporary release. Nor shall any person under sentence for any sex offense defined in article one hundred thirty of the penal law be eligible to participate in a community services program as defined in subdivision five of this section. Notwithstanding the foregoing, no person who is an otherwise eligible incarcerated individual who is under sentence for a crime involving: (a) infliction of serious physical injury upon another as defined in the penal law, (b) a sex offense involving forcible compulsion, or (c) any other offense involving the use or threatened use of a deadly weapon may participate in a temporary release program without the written approval of the commissioner. The commissioner shall promulgate regulations giving direction to the temporary release committee at each institution in order to aid such committees in carrying out this mandate.

The governor, by executive order, may exclude or limit the participation of any class of otherwise eligible incarcerated individuals from participation in a temporary release program. Nothing in this paragraph shall be construed to affect either the validity of any executive order previously issued limiting the participation of otherwise eligible incarcerated individuals in such program or the authority of the commissioner to impose appropriate regulations limiting such participation.

3. "Work release program" means a program under which eligible incarcerated individuals may be granted the privilege of leaving the premises of an institution for a period not exceeding fourteen hours in any day for the purpose of on-the-job training or employment, or for any matter necessary to the furtherance of any such purposes. No person shall be released into a work release program unless prior to release such person has a reasonable assurance of a job training program or employment. If after release, such person ceases to be employed or ceases to participate in the training program, the incarcerated individual's privilege to participate in such work release program may be revoked in accordance with rules and regulations promulgated by the commissioner.

4. "Furlough program" means a program under which eligible incarcerated individuals may be granted the privilege of leaving the premises of an institution for a period not exceeding seven days for the purpose of seeking employment, maintaining family ties, solving family problems, seeking post-release housing, attending a short-term educational or vocational training course, or for any matter necessary to the furtherance of any such purposes.

5. "Community services program" means a program under which eligible incarcerated individuals may be granted the privilege of leaving the premises of an institution for a period not exceeding fourteen hours in any day for the purpose of participation in religious services, volunteer work, or athletic events, or for any matter necessary to the furtherance of any such purposes.

6. "Leave of absence" means a privilege granted to an incarcerated individual, who need not be an "eligible incarcerated individual," to leave the premises of an institution for the period of time necessary:

(a) to visit his or her spouse, child, brother, sister, grandchild, parent, grandparent or ancestral aunt or uncle during his or her last illness if death appears to be imminent;

(b) to attend the funeral of such individual;

(c) to undergo surgery or to receive medical or dental treatment not available in the correctional institution only if deemed absolutely necessary to the health and well-being of the incarcerated individual and whose approval is granted by the commissioner or his or her designated representative.

7. "Educational leave" means a privilege granted to an eligible incarcerated individual to leave the premises of an institution for a period not exceeding fourteen hours in any day for the purpose of education or vocational training, or for any matter necessary to the furtherance of any such purposes.

8. "Industrial training leave" means a privilege granted to an eligible incarcerated individual to leave the premises of an institution for a period not exceeding fourteen hours in any day for the purpose of participating in an industrial training program, or for any matter necessary to the furtherance of any such purpose.

9. "Temporary release program" means a "work release program," a "furlough program," a "community services program," an "industrial training leave," an "educational leave," or a "leave of absence."

10. "Extended bounds of confinement" means the area in which an incarcerated individual participating in a temporary release program may travel, the routes he or she is permitted to use, the places he or she is authorized to visit, and the hours, days, or specially defined period during which he or she is permitted to be absent from the premises of the institution.

11. "Temporary release committee" means the body of persons, which may include members of the public, appointed pursuant to regulations promulgated by the commissioner to serve at the pleasure of the commissioner for the purpose of formulating, modifying and revoking

temporary release programs at an institution.

12. "Superintendent" means the person in charge of an institution, by whatever title he or she may be known.

* NB Effective September 1, 2027 until the expiration of §42 of ch. 60/1994, §10 of ch. 339/1972 and §3 of ch. 554/1986

* § 851. Definitions. As used in this article the following terms have the following meanings:

1. "Institution" means any institution under the jurisdiction of the state department of corrections and community supervision.

2. "Eligible incarcerated individual" means a person confined in an institution where a work release program has been established who is eligible for release on parole or who will become eligible for release on parole within one year.

3. "Work release program" means a program under which eligible incarcerated individual may be granted the privilege of leaving the premises of an institution for the purpose of education, on-the-job training or employment.

4. "Extended bounds of confinement" means the area in which an incarcerated individual participating in a work release program may travel, the routes he or she is permitted to use, the places he or she is authorized to visit, and the hours, not exceeding fourteen hours in any day, he or she is permitted to be absent from the premises of the institution.

5. "Work release committee" means the body of persons, which may include members of the public, appointed pursuant to regulations promulgated by the commissioner for the purpose of formulating, modifying and revoking work release programs at an institution.

6. "Warden" means the person in charge of an institution, by whatever title he may be known.

* NB Effective only upon the expiration of §42 of ch. 60/1994, §10 of

ch. 339/1972 and §3 of ch. 554/1986

*** § 852. Establishment of temporary release.** 1. The commissioner, guided by consideration for the safety of the community and the welfare of the incarcerated individual, shall review and evaluate all existing rules, regulations and directives relating to current temporary release programs and consistent with the provisions of this article for the administration of temporary release programs shall by January first, nineteen hundred seventy-eight promulgate new rules and regulations for the various forms of temporary release. Such rules and regulations shall reflect the purposes of the different programs and shall include but not be limited to selection criteria, supervision and procedures for the disposition of each application.

2. The commissioner shall appoint or cause to be appointed a temporary release committee for each institution which shall meet on a regularly scheduled basis to review all applications for temporary release.

3. Work release programs may be established only at institutions classified by the commissioner as work release facilities. Educational release programs may be established only at those educational institutions which shall maintain attendance records for participating incarcerated individuals.

4. The commissioner shall designate in the rules and regulations of the department appropriate employees or an appropriate unit of the department to be responsible for (a) securing education, on-the-job training and employment opportunities for incarcerated individuals who are eligible to participate in a work release program, and (b) assisting such incarcerated individuals in such other manner as necessary or desirable to assure the success of the program.

5. All incarcerated individuals participating in temporary release programs shall be assigned to parole officers for supervision. As part of the parole officer's supervisory functions he or she shall be required to provide reports every two months on each incarcerated

individual under his or her supervision. Such reports shall include but not be limited to:

(a) an evaluation of the individual's participation in such program;

(b) a statement of any problems and the manner in which such problems were resolved relative to an individual's participation in such programs; and

(c) a recommendation with respect to the individual's continued participation in the program.

* NB Effective until September 1, 2027

* § 852. Establishment of work release. 1. The commissioner of correction shall designate one or more institutions for the conduct of work release programs. Upon such designation the commissioner, with the approval of the chairman of the board of parole, shall promulgate rules and regulations consistent with the provisions of this article for the administration of work release programs at any institution designated, and shall appoint or cause to be appointed a work release committee for such institution.

2. The department shall be responsible for securing appropriate education, on-the-job training and employment opportunities for eligible incarcerated individuals and shall supervise incarcerated individuals during their participation in work release programs outside the premises of institutions.

* NB Effective September 1, 2027

§ 853. Reporting and information. To ensure the accurate maintenance and availability of statistics and records with respect to participation in temporary release programs, the department shall maintain the following information relative to the operation of temporary release programs:

(a) number of incarcerated individual participants in each temporary release program;

(b) number of incarcerated individuals participating in temporary release for whom written approval of the commissioner was required pursuant to subdivision two of section eight hundred fifty-one of this chapter;

(c) number and type of individual programs approved for each participant;

(d) approved participating employers and educational institutions;

(e) number of incarcerated individuals arrested;

(f) incarcerated individuals involuntarily returned for violations by institution;

(g) absconders still at large;

(h) number of disciplinary proceedings initiated and the results thereof;

(i) number of temporary release committee decisions appealed and the results thereof by institution;

(j) reports or information made available to the department with respect to the participation of individuals in such programs, including any incidents of absconding or re-arrest.

The department shall also forward to the state commission of correction quarterly reports including, but not limited to, the information identified in subdivisions (a), (b), (d), (e), (f) and (g) of this section and such other information requested by the commission or available to the department with respect to such programs.

§ 854. Evaluation and recommendation. In recognition of the need for an independent evaluation of, and recommendations with respect to, temporary release, the commission of correction shall evaluate and assess the administration and operation of all temporary release programs conducted pursuant to this article and shall submit to the governor and the legislature by March first, nineteen hundred seventy-eight, its findings together with any recommendations with respect to the proper operation or the improvement of such temporary release programs.

*** § 855. Procedure for temporary release of incarcerated individuals.** 1. A person confined in an institution designated for the conduct of work release programs who is an eligible incarcerated individual, may make application to the temporary release committee of the institution for permission to participate in a work release program.

2. Any eligible incarcerated individual may make application to the temporary release committee for participation in a furlough program or community services program, or for an industrial training leave or educational leave.

3. Any incarcerated individual may make application to the temporary release committee for a leave of absence provided, however, that in exigent circumstances such application may be made directly to the superintendent of the institution and the superintendent may exercise all of the powers of the temporary release committee subject, however, to any limitation or requirement set forth in the rules and regulations of the department and subject further to the discretion of the commissioner. All leave of absences provided in exigent circumstances shall state the reasons for approval or disapproval of the application and shall be included in the incarcerated individual's institutional parole file.

4. If the temporary release committee determines that a temporary release program for the applicant is consistent with the safety of the community and the welfare of the applicant, and is consistent with rules and regulations of the department, the committee, with the assistance of the employees or unit designated by the commissioner pursuant to subdivision four of section eight hundred fifty-two of this article, shall develop a suitable program of temporary release for the applicant. Consistent with these provisions, any educational leave program shall consider the scheduling of classes to insure a reduction of release time not spent in educational pursuits.

5. The committee shall then prepare a memorandum setting forth the details of the temporary release program including the extended bounds of confinement and any other matter required by rules or regulations of the department. Such memorandum shall be transmitted to the superintendent who may approve or reject the program, subject to rules and regulations promulgated by the commissioner. If the superintendent approves the program, he or she shall indicate such approval in writing

by signing the memorandum. If the superintendent rejects the program, he or she shall state his or her reasons in writing and a copy of his or her statement shall be given to the incarcerated individual and to the commissioner and such decision shall be reviewed by the commissioner. If the commissioner rejects the program, he or she shall state his or her reasons in writing. A copy of such statement shall be filed in the incarcerated individual's institutional file.

6. In order for an applicant to accept a program of temporary release, such incarcerated individual shall agree to be bound by all the terms and conditions thereof and shall indicate such agreement by signing the memorandum of the program immediately below a statement reading as follows: "I accept the foregoing program and agree to be bound by the terms and conditions thereof. I understand that I will be under the supervision of the state department of corrections and community supervision while I am away from the premises of the institution and I agree to comply with the instructions of any parole officer or other employee of the department assigned to supervise me. I understand that my participation in the program is a privilege which may be revoked at any time, and that if I violate any provision of the program I may be taken into custody by any peace officer or police officer and I will be subject to disciplinary procedures. I further understand that if I intentionally fail to return to the institution at or before the time specified in the memorandum I may be found guilty of a felony." Such agreement shall be placed on file at the institution from which such temporary release is granted.

7. After approving the program of temporary release, the superintendent may then permit an incarcerated individual who has accepted such program to go outside the premises of the institution within the limits of the extended bounds of confinement described in the memorandum; provided, however, that no such permission shall become effective in the case of a work release or furlough program prior to the time at which the person to be released becomes an eligible incarcerated individual.

8. At least three days before releasing an incarcerated individual on

a temporary release program, the superintendent shall notify in writing the sheriff or chief of police of the community into which the incarcerated individual is to be released.

9. Participation in a temporary release program shall be a privilege. Nothing contained in this article may be construed to confer upon any incarcerated individual the right to participate, or to continue to participate, in a temporary release program. The superintendent of the institution may at any time, and upon recommendation of the temporary release committee or of the commissioner or of the chairman of the state board of parole or his or her designee shall, revoke any incarcerated individual's privilege to participate in a program of temporary release in accordance with regulations promulgated by the commissioner.

* NB Effective until September 1, 2027

* § 853. Procedure for release of eligible incarcerated individuals. 1. A person confined in an institution designated for the conduct of work release programs who is, or who within ninety days will become, an eligible incarcerated individual, may make application to the work release committee of the institution for permission to participate in a work release program.

2. If the work release committee determines that a work release program for the applicant is consistent with the safety of the community, is in the best interests of rehabilitation of the applicant, and is consistent with rules and regulations of the commissioner, the committee shall develop a suitable program of work release for the applicant.

3. The committee shall then prepare a memorandum setting forth the details of the work release program, including the extended bounds of confinement and any other matter required by rules or regulations of the commissioner. Such memorandum shall be transmitted to the warden who may approve or reject the program. If the warden approves the program, he or she shall indicate such approval in writing by signing the memorandum. If the warden rejects the program, such decision shall be reviewed by the commissioner.

4. In order for an applicant to accept a program of work release, he or she shall agree to be bound by all the terms and conditions thereof and shall indicate such agreement by signing the memorandum of the program immediately below a statement reading as follows: "I accept the foregoing program and agree to be bound by the terms and conditions thereof. I understand that I will be under the supervision of the department of corrections and community supervision while I am away from the premises of the institution and I agree to comply with the instructions of any parole officer assigned to supervise me. I will carry a copy of this memorandum on my person at all times while I am away from the premises of the institution and I will exhibit it to any peace officer upon his or her request. I understand that my participation in the program is a privilege which may be revoked at any time, and that if I violate any provision of the program I may be taken into custody by any peace officer and I will be subject to disciplinary procedures. I further understand that if I intentionally fail to return to the institution at or before the time specified in the memorandum I may be found guilty of a felony."

5. After approving the program of work release, the warden may then permit an eligible incarcerated individual who has accepted such program to go outside the premises of the institution within the limits of the extended bounds of confinement described in the memorandum.

6. Participation in a work release program shall be a privilege. Nothing contained in this article may be construed to confer upon any incarcerated individual the right to participate, or to continue to participate, in a work release program. The warden of the institution may at any time, and upon recommendation of the work release committee or of the chairman of the state board of parole or his or her designee shall, revoke any incarcerated individual's privilege to participate in a program of work release.

* NB Effective September 1, 2027

*** § 856. Conduct of incarcerated individuals participating in a temporary release program.** 1. An incarcerated individual who is permitted to leave the premises of an institution to participate in a temporary release program shall have on his or her person a card identifying him or her as a participant in a temporary release program as signed by the superintendent of the institution at all times while outside the premises of the institution and shall exhibit such card to any peace officer or police officer upon request of such officer. The commissioner may, by regulation, require such information, including effective dates, to be included in such card as he or she shall deem necessary and proper.

2. If the incarcerated individual violates any provision of the program, or any rule or regulation promulgated by the commissioner for conduct of incarcerated individuals participating in temporary release programs, such incarcerated individual shall be subject to disciplinary measures to the same extent as if he or she violated a rule or regulation of the commissioner for conduct of incarcerated individuals within the premises of the institution. The failure of an incarcerated individual to voluntarily return to the institution of his or her confinement more than ten hours after his or her prescribed time of return shall create a rebuttable presumption that the failure to return was intentional. Any incarcerated individual who is found to have intentionally failed to return pursuant to this subdivision shall be an absconder in violation of his or her temporary release program and will not be an eligible incarcerated individual as defined in subdivision two of section eight hundred fifty-one of this chapter. The creation of such rebuttable presumption shall not be admissible in any court of law as evidence of the commission of any crime defined in the penal law. A full report of any such violation, a summary of the facts and findings of the disciplinary hearing and disciplinary measures taken, shall be made available to the board for the incarcerated individual's next scheduled appearance before the state board of parole including any defense or explanation offered by the incarcerated individual in response at such hearing.

3. The provisions of this chapter relating to good behavior allowances shall apply to behavior of incarcerated individuals while participating in temporary release programs outside the premises of institutions, and

such allowances may be granted, withheld, forfeited or cancelled in whole or in part for behavior outside the premises of an institution to the same extent and in the same manner as is provided for behavior of incarcerated individuals within the premises of institutions.

4. An incarcerated individual who is in violation of the provisions of his or her temporary release program may be taken into custody by any peace officer or police officer and, in such event, the incarcerated individual shall be returned forthwith to either the institution that released him or her, or to the nearest secure facility where greater security is indicated. In any case where the institution is in a county other than the one in which the incarcerated individual is apprehended, the officer may deliver the incarcerated individual to the nearest institution, jail or lockup and it shall be the duty of the person in charge of said facility to hold such incarcerated individual securely until such time as he or she is delivered into the custody of an officer of the institution from which he or she was released. Upon delivering the incarcerated individual to an institution, jail or lockup, other than the one from which the incarcerated individual was released, the officer who apprehended the incarcerated individual shall forthwith notify the superintendent of the institution from which the incarcerated individual was released and it shall be the duty of the superintendent to effect the expeditious return of the incarcerated individual to the institution.

5. Upon the conclusion or termination of a temporary release program, a full report of the incarcerated individual's performance in such program shall be prepared in accordance with regulations of the commissioner. Such report shall include but not be limited to: adjustment to release, supervision contacts, statement of any violations of the terms and conditions of release and of any disciplinary actions taken, and an assessment of the incarcerated individual's suitability for parole. Such report shall be made available to the state board of parole for the incarcerated individual's next scheduled appearance before such board.

* NB Effective until September 1, 2027

* § 854. Conduct of incarcerated individuals participating in work

release program. 1. An incarcerated individual who is permitted to leave the premises of an institution to participate in a program of work release shall have on his or her person a copy of the memorandum of that program as signed by the warden of the institution at all times while outside the premises of the institution and shall exhibit such copy to any peace officer upon request of the officer.

2. If the incarcerated individual violates any provision of the program, or any rule or regulation promulgated by the commissioner of corrections and community supervision for conduct of incarcerated individuals participating in work release programs, he or she shall be subject to disciplinary measures to the same extent as if he or she violated a rule or regulation of the commissioner for conduct of incarcerated individuals within the premises of the institution.

3. The provisions of this chapter relating to good behavior allowances shall apply to behavior of incarcerated individuals while participating in work release programs outside the premises of institutions, and such allowances may be granted, withheld, forfeited or cancelled in whole or in part for behavior outside the premises of an institution to the same extent and in the same manner as is provided for behavior of incarcerated individuals within the premises of institutions.

4. An incarcerated individual who is in violation of the provisions of his or her work release program may be taken into custody by any peace officer and, in such event, the incarcerated individual shall be returned forthwith to the institution that released him or her. In any case where the institution is in a county other than the one in which the incarcerated individual is apprehended, the officer may deliver the incarcerated individual to the nearest institution, jail or lockup and it shall be the duty of the person in charge of said facility to hold such incarcerated individual securely until such time as he or she is delivered into custody of an officer of the institution from which he or she was released. Upon delivering the incarcerated individual to an institution, jail or lockup, other than the one from which he or she was released, the peace officer who apprehended the incarcerated individual shall forthwith notify the warden of the institution from which the

incarcerated individual was released and it shall be the duty of the warden to effect the expeditious return of the incarcerated individual to the institution.

* NB Effective September 1, 2027

§ 857. Complaint and abuse review. Any person may submit to the commission of correction any complaint he or she may have concerning programmatic abuses. The commission of correction shall evaluate such complaints and, where indicated, conduct any needed investigation. If the commission concludes that a complaint is valid, the commission shall make recommendations to the department for corrective action. Where the commission believes sufficient evidence exists to support a criminal charge, the commission shall report such evidence to the appropriate law enforcement agencies.

§ 858. Application of labor laws. The laws of the state and its political subdivisions with respect to employment conditions shall apply to incarcerated individuals participating in work release programs.

§ 859. When employment prohibited. No employment under a work release program may be approved or continued if (a) such employment results in the displacement of employed workers, or is applied in skills, crafts or trades in which there is a surplus of available labor in the locality, or (b) the rates of pay and other conditions of employment are not at least equal to those paid or provided for work of similar nature in the locality in which the work is to be performed, or (c) there is any labor strike or lockout in the establishment in which the incarcerated individual is employed.

§ 860. Disposition of earnings. The earnings of an incarcerated individual participating in a work release program, less any payroll deductions required or authorized by law, shall be turned over to the warden who shall deposit such receipts as incarcerated individuals' funds pursuant to section one hundred sixteen of this chapter. Such receipts shall not be subject to attachment or garnishment in the hands of the warden. The commissioner of correction may authorize the warden to make disbursements of such receipts, and such receipts may be disbursed, for any or all of the following purposes:

1. Appropriate and reasonable costs related to the incarcerated individual's participation in the work release program;

2. Support of the incarcerated individual's dependents;

3. Payment of fines imposed by any court;

4. Payment of any court ordered restitution or reparation to the victim of the incarcerated individual's crime.

5. Purchases by the incarcerated individual from the commissary of the institution.

The balance of such receipts, if any, after disbursements for the foregoing purposes shall be paid to the incarcerated individual upon termination of his or her imprisonment.

§ 861. Incarcerated individual not agent of state. An incarcerated individual participating in a work release program shall not, merely by reason of such participation, be deemed an agent, employee or servant of the state while outside the premises of an institution pursuant to the terms of a work release program.

ARTICLE 26-A

SHOCK INCARCERATION PROGRAM
FOR STATE CORRECTIONAL INCARCERATED INDIVIDUALS

867. Procedure for selection of participants in shock incarceration program.

§ 865. Definitions. As used in this article, the following terms mean:

1. "Eligible incarcerated individual" means a person sentenced to an indeterminate term of imprisonment who will become eligible for release on parole within three years or sentenced to a determinate term of imprisonment who will become eligible for conditional release within three years, who has not reached the age of fifty years, who has not previously been convicted of a violent felony as defined in article seventy of the penal law, or a felony in any other jurisdiction which includes all of the essential elements of any such violent felony, upon which an indeterminate or determinate term of imprisonment was imposed and who was between the ages of sixteen and fifty years at the time of commission of the crime upon which his or her present sentence was based. Notwithstanding the foregoing, no person who is convicted of any of the following crimes shall be deemed eligible to participate in this program: (a) a violent felony offense as defined in article seventy of the penal law; provided, however, that a person who is convicted of burglary in the second degree as defined in subdivision two of section 140.25 of the penal law, or robbery in the second degree as defined in subdivision one of section 160.10 of the penal law, or an attempt thereof, is eligible to participate, (b) an A-I felony offense, (c) any homicide offense as defined in article one hundred twenty-five of the penal law, (d) any felony sex offense as defined in article one hundred thirty of the penal law and (e) any escape or absconding offense as defined in article two hundred five of the penal law.

2. "Shock incarceration program" means a program pursuant to which eligible incarcerated individuals are selected to participate in the program and serve a period of six months in a shock incarceration facility, which shall provide rigorous physical activity, intensive regimentation and discipline and rehabilitation therapy and programming. Such incarcerated individuals may be selected either: (i) at a reception center; or (ii) at a general confinement facility when the otherwise

eligible incarcerated individual then becomes eligible for release on parole within three years in the case of an indeterminate term of imprisonment, or then becomes eligible for conditional release within three years in the case of a determinate term of imprisonment.

§ 866. Establishment of shock incarceration program. 1. The commissioner, guided by consideration for the safety of the community and the welfare of the incarcerated individual, shall promulgate rules and regulations for the shock incarceration program. Such rules and regulations shall reflect the purpose of the program and shall include, but not be limited to, selection criteria, incarcerated individual discipline, programming and supervision, and program structure and administration.

2. The commissioner shall appoint or cause to be appointed a shock incarceration selection committee at one or more designated correctional facilities, which shall meet on a regularly scheduled basis to review all eligible incarcerated individuals transferred to such facility for screening and all applications for the shock incarceration program.

3. Shock incarceration programs may be established only at institutions classified by the commissioner as shock incarceration facilities.

4. The department may contract with the division of substance abuse services for the provision of such services as may be required to assure the success of the program.

5. The department shall conduct an ongoing evaluation of the program to ensure that the programmatic objectives are met. The department shall undertake studies and prepare reports periodically on the impact of the program.

§ 867. Procedure for selection of participants in shock incarceration program. 1. An eligible incarcerated individual may make an application to the shock incarceration screening committee for permission to participate in the shock incarceration program.

2. If the shock incarceration screening committee determines that an incarcerated individual's participation in the shock incarceration program is consistent with the safety of the community, the welfare of the applicant and the rules and regulations of the department, the committee shall forward the application to the commissioner or his designee for approval or disapproval.

2-a. Subdivisions one and two of this section shall apply to a judicially sentenced shock incarceration incarcerated individual only to the extent that the screening committee may determine whether the incarcerated individual has a medical or mental health condition that will render the incarcerated individual unable to successfully complete the shock incarceration program, and the facility in which the incarcerated individual will participate in such program. Notwithstanding subdivision five of this section, an incarcerated individual sentenced to shock incarceration shall promptly commence participation in the program when such incarcerated individual is an eligible incarcerated individual pursuant to subdivision one of section eight hundred sixty-five of this article.

3. Applicants cannot participate in the shock incarceration program unless they agree to be bound by all the terms and conditions thereof and indicate such agreement by signing the memorandum of the program immediately below a statement reading as follows:

"I accept the foregoing program and agree to be bound by the terms and conditions thereof. I understand that my participation in the program is a privilege that may be revoked at any time at the sole discretion of the commissioner. I understand that I must successfully complete the entire program to obtain a certificate of earned eligibility upon the completion of said program, and in the event that I do not successfully complete said program, for any reason, I will be transferred to a nonshock incarceration correctional facility to continue service of my sentence."

4. An incarcerated individual who has successfully completed a shock incarceration program shall be eligible to receive such a certificate of earned eligibility pursuant to section eight hundred five of this chapter. Notwithstanding any other provision of law, an incarcerated individual sentenced to a determinate sentence of imprisonment who has successfully completed a shock incarceration program shall be eligible to receive such a certificate of earned eligibility and shall be immediately eligible to be conditionally released.

5. Participation in the shock incarceration program shall be a privilege. Nothing contained in this article may be construed to confer upon any incarcerated individual the right to participate or continue to participate therein.

ARTICLE 27

WORK RELEASE PROGRAM FOR COUNTY JAILS

§ 870. Establishment of program. The sheriff, upon approval of the legislative body of the county, may establish a work release program pursuant to which prisoners, sentenced to and confined in any county jail under his jurisdiction, may be granted the privilege of leaving confinement for the purpose of working at gainful employment, participating in a privately or publicly sponsored program of vocational training, with or without compensation, or attending an educational institution. The work release program may also include the release from confinement during necessary and reasonable hours for the purpose of caring for the prisoner's family.

§ 871. Procedures. (a) Any prisoner sentenced to and confined in any jail for which the sheriff has established a work release program may apply to the sheriff for permission to participate in such program. Pursuant to rules and regulations promulgated by the sheriff and approved by the state commission of correction, the sheriff may approve or disapprove the application. In the event of approval, the sheriff shall prepare a specific, written work release plan for the prisoner which shall contain such terms and conditions as shall be deemed reasonably proper and necessary. The prisoner shall signify in writing his agreement to the terms of the work release plan in such form as the sheriff shall specify and a copy of the work release plan shall be delivered to the prisoner prior to his participation therein. The work release plan may be revoked, suspended or modified by the sheriff at any time for good cause, with or without notice to the prisoner. Any disapproval, revocation, suspension or modification of a work release application or plan shall be reviewable by the state commission of correction upon written request of the prisoner which shall be forwarded immediately to the commission by the sheriff. The decision of the commission shall be final and not be subject to judicial review.

(b) The sheriff shall appoint a committee, to be known as the work release committee, composed of at least one member of the county department of probation and of such members of the staff of the jail of confinement as he shall deem proper. The work release committee may also include such other persons whom the sheriff may deem proper, and such persons shall be selected upon the basis of their knowledge and experience in the field of penology, law, medicine, labor, commerce, theology or social services. The committee shall advise and assist the sheriff in administering the work release program, provided, however, that any determination to approve, disapprove, revoke, suspend or modify any work release application or plan shall rest solely in the discretion of the sheriff subject to review by the commission of correction as set forth in subdivision (a) of this section.

(c) The sheriff and work release committee may assist prisoners seeking admission to the work release program in securing gainful employment or participation in a publicly or privately sponsored program of vocational training.

(d) A work release plan may include employment within a county other than that in which the jail of confinement is located. The sheriff may arrange with the sheriff or the superintendent or other person in charge of a jail or penitentiary of any other county which has adopted a work release program to maintain custody of any prisoner employed in such other county during the period of employment or until his discharge from confinement, whichever shall occur first. In such event, the sheriff or superintendent of the jail or penitentiary having such custody of the prisoner shall dispose of the earnings of the prisoner pursuant to section eight hundred seventy-two of this article.

§ 872. Disposition of earnings. (a) The wages or salary of a prisoner participating in the work release program, less payroll deductions required by law, shall be deposited with the sheriff in a trust fund account, which fund shall not be subject to garnishment or attachment. The sheriff shall keep a ledger of the account of each prisoner and he may disburse from the said trust fund account:

(1) such sum as the prisoner may be legally obligated to pay for the support of his dependents as recommended by the department of social services of the county in which such dependents reside, provided, however, that the prisoner may authorize that a sum greater than that so recommended be disbursed for this purpose;

(2) a sum determined by the sheriff to be the cost to the county of providing food, lodging and clothing for such prisoner subject, however, to approval by the state commission of correction;

(3) a sum determined by the sheriff to be the cost to the county of the actual and necessary food, travel and other expenses of such prisoner when released from confinement for the purpose of participating in the work release program;

(4) such sums as may be necessary to satisfy any fines outstanding against the prisoner;

(5) such sums as may be necessary to satisfy any outstanding legal obligations of the prisoner, acknowledged by him in writing and filed

with the sheriff in such form as the sheriff shall specify.

(b) Any balance remaining in the trust fund account after such disbursements shall be paid to the prisoner upon his discharge from confinement.

(c) On or before the thirty-first day of January of each year, the sheriff shall prepare a summary of receipts and disbursements of all accounts kept during the previous year and shall forward the summary to the chief executive officer of the county. The summary shall be a public record.

§ 873. Separate housing. The sheriff may designate separate facilities within the jail for the quartering of prisoners participating in the work release program.

§ 874. When employment prohibited. (a) No employment under the work release program for any prisoner shall be approved if:

(1) it is ascertained by the sheriff that such employment will result in the displacement of employed workers, or be applied in skills, crafts or trades in which there is a surplus of available labor in the locality, except in the case of a prisoner who is to be employed by an employer for whom he was employed as a free person prior to the commencement of his sentence, and;

(2) the rates of pay and other conditions of employment are not at least equal to those paid or provided for work of a similar nature in the locality in which the work is to be performed.

(b) The state department of labor shall exercise the same supervision over conditions of employment for prisoners participating in the work release program as such department does over conditions of employment for free persons.

(c) In no event shall any work release program be permitted when there is any labor strike or lock-out in the establishment in which the prisoner is, or is to be, employed.

§ 876. Eligibility for reduction of sentence, parole or conditional

release. Nothing in this article shall be construed to prejudice the eligibility of any prisoner participating in a work release program for the purposes of discretionary reduction of sentence, parole or conditional release except absconding from work release as defined by section 205.16 of the penal law; provided, however, that the participation of any prisoner in such program may be considered favorably for such purposes if such participation has assisted in the rehabilitation of such prisoner.

§ 877. Prisoner not an agent of county. No prisoner participating in a work release program shall be deemed an agent, employee or involuntary servant of the county while released from the jail of confinement pursuant to the terms of any work release plan; provided, however, that when a prisoner is employed by the state or a local municipality, his relationship to the state or local municipality arising out of such employment shall be determined in the same manner as if he were a free person so employed.

§ 878. Annual report. The sheriff shall annually prepare a report of the work release program which shall be transmitted to the legislature on or before the first day of March in each year. Such annual report shall include a summary of the operations and activities of the program for the preceding year and such recommendations for the improvement of the program as the sheriff shall deem necessary and proper.

§ 879. Application of article. This article shall not apply to any sheriff in the city of New York or to the commissioner of correction in the city of New York.

ARTICLE 35

LAWS REPEALED; WHEN TO TAKE EFFECT

§ 1000. Laws repealed. Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 1001. When to take effect. This chapter shall take effect immediately.