

8588

I N A S S E M B L Y

January 24, 2014

Introduced by M. of A. AUBRY -- read once and referred to the Committee on Correction

AN ACT to amend the correction law, in relation to restricting the use of segregated confinement and creating alternative therapeutic and rehabilitative confinement options

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 137 of the correction law is amended by adding a  
2 new subdivision 5-a to read as follows:

3 5-A. THE USE OF SEGREGATED CONFINEMENT, EXCLUSION OF CERTAIN SPECIAL  
4 POPULATIONS, AND LENGTH OF TIME ANY PERSON CAN SPEND IN SEGREGATED  
5 CONFINEMENT SHALL BE RESTRICTED IN ACCORDANCE WITH PARAGRAPHS (G), (H),  
6 (I), (J), (K), (L), (M), AND (N) OF SUBDIVISION SIX OF THIS SECTION OR  
7 ANY OTHER APPLICABLE LAW.

8 S 2. Subdivision 23 of section 2 of the correction law, as added by  
9 chapter 1 of the laws of 2008, is amended to read as follows:

10 23. "Segregated confinement" means the [disciplinary] confinement,  
11 OTHER THAN FOR EMERGENCY CONFINEMENT AS DEFINED IN SUBDIVISION  
12 THIRTY-THREE OF THIS SECTION, OR FOR DOCUMENTED MEDICAL REASONS OR  
13 MENTAL HEALTH EMERGENCIES, of an inmate in a special housing unit or in  
14 a separate keeplock housing unit OR ANY FORM OF KEEPLOCK, OR CELL  
15 CONFINEMENT FOR MORE THAN SEVENTEEN HOURS A DAY OTHER THAN IN A FACILI-  
16 TY-WIDE LOCKDOWN. Special housing units and separate keeplock units are  
17 housing units that consist of cells grouped so as to provide separation  
18 from the general population, and may be used to house inmates confined  
19 pursuant to the disciplinary procedures described in regulations.

20 S 3. Section 2 of the correction law is amended by adding five new  
21 subdivisions 32, 33, 34, 35, and 36 to read as follows:

22 32. "SPECIAL POPULATIONS" MEANS ANY PERSON: (A) TWENTY-ONE YEARS OF  
23 AGE OR YOUNGER; (B) FIFTY-FIVE YEARS OF AGE OR OLDER; (C) WITH A DISA-  
24 BILITY AS DEFINED IN SUBDIVISION TWENTY-ONE OF SECTION TWO HUNDRED NINE-  
25 TY-TWO OF THE EXECUTIVE LAW, INCLUDING BUT NOT LIMITED TO, FOR PURPOSES  
26 OF MENTAL IMPAIRMENT, PERSONS WITH A SERIOUS MENTAL ILLNESS AS DEFINED  
27 IN PARAGRAPH (E) OF SUBDIVISION SIX OF SECTION ONE HUNDRED THIRTY-SEVEN

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

LBD13381-02-4

1 OF THIS CHAPTER; (D) WHO IS PREGNANT; OR (E) WHO IS OR IS PERCEIVED TO  
2 BE LESBIAN, GAY, BISEXUAL, TRANSGENDER, OR INTERSEX.

3 33. "EMERGENCY CONFINEMENT" MEANS CONFINEMENT IN ANY CELL FOR NO MORE  
4 THAN TWENTY-FOUR CONSECUTIVE HOURS AND NO MORE THAN FORTY-EIGHT TOTAL  
5 HOURS IN ANY FIFTEEN DAY PERIOD, WITH AT LEAST ONE HOUR OF OUT-OF-CELL  
6 RECREATION FOR EVERY TWENTY-FOUR HOURS.

7 34. "SHORT-TERM SEGREGATED CONFINEMENT" MEANS SEGREGATED CONFINEMENT  
8 OF NO MORE THAN THREE CONSECUTIVE DAYS AND SIX DAYS TOTAL WITHIN ANY  
9 THIRTY DAY PERIOD.

10 35. "EXTENDED SEGREGATED CONFINEMENT" MEANS SEGREGATED CONFINEMENT OF  
11 NO MORE THAN FIFTEEN CONSECUTIVE DAYS AND TWENTY DAYS TOTAL WITHIN ANY  
12 SIXTY DAY PERIOD.

13 36. "RESIDENTIAL REHABILITATION UNIT" MEANS SECURE AND SEPARATE UNITS  
14 USED FOR THERAPY, TREATMENT, AND REHABILITATIVE PROGRAMMING OF PEOPLE  
15 WHO WOULD BE PLACED IN SEGREGATED CONFINEMENT FOR MORE THAN FIFTEEN  
16 DAYS. SUCH UNITS ARE THERAPEUTIC AND TRAUMA-INFORMED, AND AIM TO ADDRESS  
17 INDIVIDUAL TREATMENT AND REHABILITATION NEEDS AND UNDERLYING CAUSES OF  
18 PROBLEMATIC BEHAVIORS.

19 S 4. Subdivision 6 of section 137 of the correction law is amended by  
20 adding eight new paragraphs (g), (h), (i), (j), (k), (l), (m), and (n)  
21 to read as follows:

22 (G) PERSONS IN A SPECIAL POPULATION AS DEFINED IN SUBDIVISION THIRTY-  
23 TWO OF SECTION TWO OF THIS CHAPTER SHALL NOT BE PLACED IN SEGREGATED  
24 CONFINEMENT FOR ANY LENGTH OF TIME. ANY SUCH PERSONS THE DEPARTMENT  
25 WOULD OTHERWISE PLACE IN SEGREGATED CONFINEMENT SHALL REMAIN IN GENERAL  
26 POPULATION OR BE DIVERTED TO A RESIDENTIAL REHABILITATION UNIT. IF A  
27 PERSON IN A SPECIAL POPULATION IS PLACED IN EMERGENCY CONFINEMENT FOR  
28 MORE THAN SIXTEEN HOURS, HE OR SHE SHALL BE ALLOWED OUT-OF-CELL AT LEAST  
29 FOUR HOURS.

30 (H) NO PERSON MAY BE IN SEGREGATED CONFINEMENT FOR LONGER THAN NECES-  
31 SARY AND NEVER MORE THAN FIFTEEN CONSECUTIVE DAYS NOR TWENTY TOTAL DAYS  
32 WITHIN ANY SIXTY DAY PERIOD. AT THESE LIMITS, PERSONS MUST BE RELEASED  
33 FROM SEGREGATED CONFINEMENT OR DIVERTED TO A SEPARATE SECURE RESIDENTIAL  
34 REHABILITATION UNIT.

35 (I) (I) ALL SEGREGATED CONFINEMENT AND RESIDENTIAL REHABILITATION  
36 UNITS SHALL CREATE THE LEAST RESTRICTIVE ENVIRONMENT NECESSARY FOR THE  
37 SAFETY OF RESIDENTS, STAFF, AND THE SECURITY OF THE FACILITY.

38 (II) PERSONS IN SEGREGATED CONFINEMENT SHALL BE ALLOWED OUT-OF-CELL AT  
39 LEAST FOUR HOURS PER DAY, INCLUDING AT LEAST ONE HOUR FOR RECREATION.  
40 PERSONS IN RESIDENTIAL REHABILITATION UNITS SHALL BE ALLOWED AT LEAST  
41 SIX HOURS PER DAY OUT-OF-CELL FOR PROGRAMMING, SERVICES, TREATMENT,  
42 AND/OR MEALS, AND AN ADDITIONAL MINIMUM OF ONE HOUR FOR RECREATION.  
43 RECREATION IN ALL UNITS SHALL TAKE PLACE IN A CONGREGATE SETTING, UNLESS  
44 EXCEPTIONAL CIRCUMSTANCES MEAN DOING SO WOULD CREATE A SIGNIFICANT AND  
45 UNREASONABLE RISK TO THE SAFETY AND SECURITY OF OTHER INCARCERATED  
46 PERSONS, STAFF, OR THE FACILITY.

47 (III) PERSONS IN SEGREGATED CONFINEMENT AND RESIDENTIAL REHABILITATION  
48 UNITS SHALL: (A) RECEIVE AT LEAST COMPARABLE MEDICAL AND MENTAL HEALTH  
49 CARE TO GENERAL POPULATION, INCLUDING OBSTETRICAL AND GYNECOLOGICAL  
50 SERVICES, IN A SETTING ENSURING PRIVACY AND CONFIDENTIALITY; (B) HAVE  
51 THEIR BASIC NEEDS MET IN A MANNER COMPARABLE TO GENERAL POPULATION, AND  
52 NEVER HAVE RESTRICTED DIETS NOR ANY ORDER RESTRICTING ANY BASIC NEED  
53 IMPOSED AS A FORM OF PUNISHMENT; (C) IF IN A RESIDENTIAL REHABILITATION  
54 UNIT BE ABLE TO RETAIN ALL THEIR PROPERTY WITH THEM; (D) HAVE COMPARABLE  
55 ACCESS TO ALL SERVICES AND MATERIALS AS IN GENERAL POPULATION; AND (E)  
56 BE ABLE TO RETAIN PROGRAM MATERIALS, COMPLETE PROGRAM ASSIGNMENTS, AND

1 CONTINUE UPON RETURN ALL UNCOMPLETED PROGRAMS THEY WERE IN PRIOR TO  
2 PLACEMENT IN SEGREGATED CONFINEMENT OR A RESIDENTIAL REHABILITATION  
3 UNIT.

4 (IV) WITHIN TEN DAYS OF ADMISSION TO A RESIDENTIAL REHABILITATION  
5 UNIT, AN ASSESSMENT COMMITTEE COMPRISED OF PROGRAM, REHABILITATION,  
6 MENTAL HEALTH, AND SECURITY STAFF SHALL ADMINISTER AN ASSESSMENT AND  
7 DEVELOP IN COLLABORATION WITH THE RESIDENT AN INDIVIDUAL REHABILITATION  
8 PLAN, BASED UPON THE PERSON'S MEDICAL, MENTAL HEALTH, AND PROGRAMMING  
9 NEEDS, THAT IDENTIFIES SPECIFIC GOALS AND PROGRAMS, TREATMENT, AND  
10 SERVICES TO BE OFFERED, WITH PROJECTED TIME FRAMES FOR COMPLETION AND  
11 RELEASE FROM THE RESIDENTIAL REHABILITATION UNIT.

12 (V) RESIDENTS IN RESIDENTIAL REHABILITATION UNITS SHALL HAVE ACCESS TO  
13 PROGRAMS AND JOBS COMPARABLE TO ALL CORE OUT-OF-CELL PROGRAMS IN GENERAL  
14 POPULATION. SUCH RESIDENTS SHALL ALSO HAVE ACCESS TO ADDITIONAL  
15 OUT-OF-CELL, TRAUMA-INFORMED THERAPEUTIC PROGRAMMING AIMED AT PROMOTING  
16 PERSONAL DEVELOPMENT, ADDRESSING UNDERLYING CAUSES OF PROBLEMATIC BEHAV-  
17 IOR RESULTING IN PLACEMENT IN A RESIDENTIAL REHABILITATION UNIT, AND  
18 HELPING PREPARE FOR DISCHARGE FROM THE UNIT AND TO THE COMMUNITY.

19 (VI) IF THE DEPARTMENT ESTABLISHES THAT A PERSON COMMITTED AN ACT  
20 DEFINED IN SUBPARAGRAPH (III) OF PARAGRAPH (J) OF THIS SUBDIVISION WHILE  
21 IN SEGREGATED CONFINEMENT OR A RESIDENTIAL REHABILITATION UNIT AND POSES  
22 A SIGNIFICANT AND UNREASONABLE RISK TO THE SAFETY AND SECURITY OF OTHER  
23 RESIDENTS OR STAFF, THE DEPARTMENT MAY RESTRICT THAT PERSON'S PARTIC-  
24 IPATION IN PROGRAMMING AND OUT-OF-CELL TIME AS NECESSARY FOR THE SAFETY  
25 OF OTHER RESIDENTS AND STAFF. IF RESTRICTIONS ARE IMPOSED IN SEGREGATED  
26 CONFINEMENT, THE DEPARTMENT MUST STILL PROVIDE AT LEAST TWO HOURS  
27 OUT-OF-CELL TIME. IF RESTRICTIONS ARE IMPOSED IN A RESIDENTIAL REHABILI-  
28 TATION UNIT, THE DEPARTMENT SHALL DEVELOP A NEW REHABILITATION PLAN,  
29 PROVIDE AT LEAST THREE HOURS OUT-OF-CELL TIME, AND ON EACH DAY PROGRAM-  
30 MING RESTRICTIONS ARE IMPOSED PROVIDE AT LEAST TWO HOURS OF OUT-OF-CELL  
31 ONE-ON-ONE THERAPY WITH THE RESIDENT AND ONE HOUR OF OUT-OF-CELL RECRE-  
32 ATION. THE DEPARTMENT SHALL REMOVE ALL RESTRICTIONS WITHIN FIFTEEN DAYS,  
33 AND MAY NOT IMPOSE NEW RESTRICTIONS UNLESS THE PERSON COMMITS A NEW ACT  
34 DEFINED IN SUBPARAGRAPH (III) OF PARAGRAPH (J) OF THIS SUBDIVISION.

35 (VII) RESTRAINTS SHALL NOT BE USED WHEN RESIDENTS LEAVE A CELL OR  
36 HOUSING AREA FOR ON-UNIT OPERATIONS, UNLESS A RESIDENT WAS FOUND AT A  
37 HEARING TO HAVE COMMITTED AN ACT OF VIOLENCE ON THE RESIDENTIAL REHABIL-  
38 ITATION UNIT WITHIN THE PREVIOUS SEVEN DAYS OR IS CURRENTLY ACTING IN AN  
39 UNACCEPTABLY VIOLENT MANNER, AND NOT USING RESTRAINTS WOULD CREATE A  
40 SIGNIFICANT AND UNREASONABLE RISK TO THE SAFETY AND SECURITY OF OTHER  
41 RESIDENTS OR STAFF.

42 (VIII) THERE SHALL BE A PRESUMPTION AGAINST THE IMPOSITION OF MISBE-  
43 HAVIOR REPORTS, PURSUIT OF DISCIPLINARY CHARGES, OR IMPOSITION OF ADDI-  
44 TIONAL TIME IN SEGREGATED CONFINEMENT FOR INDIVIDUALS IN SEGREGATED  
45 CONFINEMENT OR RESIDENTIAL REHABILITATION UNITS. THE DEPARTMENT SHALL  
46 USE OTHER NON-DISCIPLINARY INTERVENTIONS TO ADDRESS ANY PROBLEMATIC  
47 BEHAVIOR. NO RESIDENT SHALL RECEIVE SEGREGATED CONFINEMENT TIME WHILE IN  
48 SEGREGATED CONFINEMENT OR A RESIDENTIAL REHABILITATION UNIT EXCEPT WHERE  
49 IT IS DETERMINED PURSUANT TO A DISCIPLINARY HEARING THAT HE OR SHE  
50 COMMITTED ONE OR MORE ACT LISTED IN SUBPARAGRAPH (III) OF PARAGRAPH (J)  
51 OF THIS SUBDIVISION WHILE ON THE UNIT, AND THAT HE OR SHE POSES A  
52 SIGNIFICANT AND UNREASONABLE RISK TO THE SAFETY OF RESIDENTS OR STAFF,  
53 OR THE SECURITY OF THE FACILITY.

54 (J) (I) THE DEPARTMENT MAY PLACE A PERSON IN EMERGENCY CONFINEMENT  
55 WITHOUT A HEARING IF NECESSARY FOR IMMEDIATELY DEFUSING A SUBSTANTIAL

1 AND IMMINENT THREAT TO SAFETY OR SECURITY OF INCARCERATED PERSONS OR  
2 STAFF.

3 (II) THE DEPARTMENT IS ENCOURAGED TO USE RESPONSES OTHER THAN SEGREGATED  
4 GATED CONFINEMENT IN RESPONSE TO DEPARTMENT RULE VIOLATIONS. THE DEPART-  
5 MENT MAY PLACE A PERSON IN SHORT TERM SEGREGATED CONFINEMENT IF IT  
6 DETERMINES, PURSUANT TO AN EVIDENTIARY HEARING, THAT THE PERSON COMMIT-  
7 TED A DEPARTMENT RULE VIOLATION WARRANTING SUCH CONFINEMENT AND THE  
8 LENGTH OF SEGREGATED CONFINEMENT IMPOSED IS PROPORTIONATE TO THE  
9 VIOLATION.

10 (III) THE DEPARTMENT MAY PLACE A PERSON IN EXTENDED SEGREGATED  
11 CONFINEMENT OR A RESIDENTIAL REHABILITATION UNIT ONLY IF, PURSUANT TO AN  
12 EVIDENTIARY HEARING, IT DETERMINES THE PERSON COMMITTED, WHILE UNDER  
13 DEPARTMENT CUSTODY, OR PRIOR TO CUSTODY IF THE COMMISSIONER OR HIS OR  
14 HER DESIGNEE DETERMINES IN WRITING BASED ON SPECIFIC OBJECTIVE CRITERIA  
15 THE ACTS WERE SO HEINOUS OR DESTRUCTIVE THAT GENERAL POPULATION HOUSING  
16 CREATES A SIGNIFICANT RISK OF IMMINENT SERIOUS PHYSICAL INJURY TO STAFF  
17 OR OTHER INCARCERATED PERSONS, ONE OF THE FOLLOWING ACTS: (A) CAUSING OR  
18 ATTEMPTING TO CAUSE SERIOUS PHYSICAL INJURY OR DEATH TO ANOTHER PERSON;  
19 (B) COMPELLING OR ATTEMPTING TO COMPEL ANOTHER PERSON, BY FORCE OR  
20 THREAT OF FORCE, TO ENGAGE IN A SEXUAL ACT; (C) EXTORTING ANOTHER, BY  
21 FORCE OR THREAT OF FORCE, FOR PROPERTY OR MONEY; (D) COERCING ANOTHER,  
22 BY FORCE OR THREAT OF FORCE, TO VIOLATE ANY RULE; (E) LEADING, ORGANIZ-  
23 ING, OR INCITING A SERIOUS DISTURBANCE THAT RESULTS IN THE TAKING OF A  
24 HOSTAGE, MAJOR PROPERTY DAMAGE, OR PHYSICAL HARM TO ANOTHER PERSON; (F)  
25 PROCURING DEADLY WEAPONS OR OTHER DANGEROUS CONTRABAND THAT POSES A  
26 SERIOUS THREAT TO THE SECURITY OF THE INSTITUTION; OR (G) ESCAPING,  
27 ATTEMPTING TO ESCAPE OR FACILITATING AN ESCAPE FROM A FACILITY, OR WHILE  
28 UNDER SUPERVISION OUTSIDE OF SUCH A FACILITY, RESULTING IN PHYSICAL HARM  
29 OR THREATENED PHYSICAL HARM TO OTHERS, OR IN MAJOR DESTRUCTION TO THE  
30 PHYSICAL PLANT.

31 (IV) NO PERSON MAY BE HELD IN SEGREGATED CONFINEMENT FOR PROTECTIVE  
32 CUSTODY. ANY UNIT USED FOR PROTECTIVE CUSTODY MUST, AT A MINIMUM,  
33 CONFORM TO REQUIREMENTS GOVERNING RESIDENTIAL REHABILITATION UNITS UNDER  
34 PARAGRAPHS (I), (L), (M), AND (N) OF THIS SUBDIVISION. WHEN APPLIED TO A  
35 PERSON IN PROTECTIVE CUSTODY, THE CRITERIA IN SUBPARAGRAPH (II) AND  
36 CLAUSE (A) OF SUBPARAGRAPH (III) OF PARAGRAPH (L) OF THIS SUBDIVISION  
37 SHALL BE THAT "THE PERSON STILL IS IN NEED OF PROTECTIVE CUSTODY"; AND  
38 THE CRITERIA IN SUBPARAGRAPH (IV) OF PARAGRAPH (1) OF THIS SUBDIVISION  
39 SHALL BE THAT "THE PERSON IS IN VOLUNTARY PROTECTIVE CUSTODY."

40 (K) (I) ALL HEARINGS TO DETERMINE IF A PERSON MAY BE PLACED IN SHORT  
41 TERM OR EXTENDED SEGREGATED CONFINEMENT SHALL OCCUR PRIOR TO PLACEMENT  
42 IN SEGREGATED CONFINEMENT UNLESS A SECURITY SUPERVISOR, WITH WRITTEN  
43 APPROVAL OF A FACILITY SUPERINTENDENT OR DESIGNEE, REASONABLY BELIEVES  
44 THE PERSON FITS THE CRITERIA FOR EXTENDED SEGREGATED CONFINEMENT. IF A  
45 HEARING DOES NOT TAKE PLACE PRIOR TO PLACEMENT, IT SHALL OCCUR AS SOON  
46 AS REASONABLY PRACTICABLE AND AT MOST WITHIN FIVE DAYS OF TRANSFER  
47 UNLESS THE CHARGED PERSON SEEKS MORE TIME. ALL HEARINGS SHALL AT A MINI-  
48 MUM COMPLY WITH THE STANDARDS OF ALL DEPARTMENT RULES FOR DISCIPLINARY  
49 HEARINGS AS OF JANUARY FIRST, TWO THOUSAND FIFTEEN. PERSONS AT ALL  
50 HEARINGS SHALL BE PERMITTED TO BE REPRESENTED BY ANY PRO BONO OR  
51 RETAINED ATTORNEY, OR LAW STUDENT; OR ANY PARALEGAL OR INCARCERATED  
52 PERSON UNLESS THE DEPARTMENT REASONABLY DISAPPROVES OF SUCH PARALEGAL OR  
53 INCARCERATED PERSON BASED UPON OBJECTIVE WRITTEN CRITERIA DEVELOPED BY  
54 THE DEPARTMENT CONCERNING QUALIFICATIONS TO BE AN ASSISTANT AT A HEAR-  
55 ING.

1 (II) ON NOTIFICATION A PERSON IS TO BE PLACED IN SEGREGATED CONFINEMENT AND PRIOR TO SUCH PLACEMENT, HE OR SHE SHALL BE ASSESSED BY RELEVANT LICENSED MEDICAL, SOCIAL, AND/OR MENTAL HEALTH PROFESSIONALS TO DETERMINE WHETHER HE OR SHE BELONGS TO ANY SPECIAL POPULATION AS DEFINED IN SUBDIVISION THIRTY-TWO OF SECTION TWO OF THIS CHAPTER. IF A PERSON DISPUTES A DETERMINATION THAT HE OR SHE IS NOT IN A SPECIAL POPULATION, HE OR SHE SHALL BE PROVIDED A HEARING WITHIN SEVENTY-TWO HOURS OF PLACEMENT IN SEGREGATED CONFINEMENT TO CHALLENGE SUCH DETERMINATION.

9 (L) (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 THAT SANCTION EXPIRES.

13 (II) WITHIN THIRTY DAYS OF ADMISSION TO A RESIDENTIAL REHABILITATION UNIT AND EVERY SIXTY DAYS THEREAFTER, THE ASSESSMENT COMMITTEE SHALL REVIEW EACH RESIDENT'S PROGRESS AND DISCHARGE A RESIDENT UNLESS IT DETERMINES IN WRITING THROUGH CREDIBLE AND RELIABLE EVIDENCE THAT THERE IS CURRENTLY A SUBSTANTIAL LIKELIHOOD THAT THE RESIDENT WILL COMMIT AN ACT LISTED IN SUBPARAGRAPH (III) OF PARAGRAPH (J) OF THIS SUBDIVISION.

19 (III) WITHIN ONE HUNDRED DAYS AFTER ADMISSION TO A RESIDENTIAL REHABILITATION UNIT AND EVERY ONE HUNDRED TWENTY DAYS THEREAFTER, A REHABILITATION REVIEW COMMITTEE, COMPRISED OF CORRECTIONAL FACILITY EXECUTIVE LEVEL PROGRAM, REHABILITATION, AND SECURITY STAFF SHALL DISCHARGE A RESIDENT FROM A RESIDENTIAL REHABILITATION UNIT UNLESS IT DETERMINES IN WRITING, AFTER CONSIDERING THE RESIDENT'S ORAL STATEMENT AND ANY WRITTEN SUBMISSIONS BY THE RESIDENT OR OTHERS, THAT: (A) THERE IS CURRENTLY A SUBSTANTIAL LIKELIHOOD THAT THE RESIDENT WILL COMMIT AN ACT LISTED IN SUBPARAGRAPH (III) OF PARAGRAPH (J) OF THIS SUBDIVISION, SIGNIFICANT THERAPEUTIC REASONS EXIST FOR KEEPING THE RESIDENT IN THE UNIT TO COMPLETE SPECIFIC PROGRAM OR TREATMENT GOALS, AND REMAINING IN THE UNIT IS IN THE BEST INTEREST OF THE RESIDENT; OR (B) THE RESIDENT HAS COMMITTED AN ACT LISTED IN SUBPARAGRAPH (III) OF PARAGRAPH (J) OF THIS SUBDIVISION DURING THE ONE HUNDRED TWENTY DAYS PRIOR TO THE REVIEW.

33 (IV) IF A RESIDENT HAS SPENT ONE YEAR IN A RESIDENTIAL REHABILITATION UNIT OR IS WITHIN SIXTY DAYS OF A FIXED OR TENTATIVELY APPROVED DATE FOR RELEASE FROM A CORRECTIONAL FACILITY, HE SHALL BE DISCHARGED FROM THE UNIT UNLESS HE OR SHE COMMITTED AN ACT LISTED IN SUBPARAGRAPH (III) OF PARAGRAPH (J) OF THIS SUBDIVISION WITHIN THE PRIOR ONE HUNDRED EIGHTY DAYS OR HE OR SHE CAUSED THE DEATH OF ANOTHER PERSON WHILE UNDER DEPARTMENT CUSTODY OR ESCAPED OR ATTEMPTED TO ESCAPE FROM DEPARTMENT OR OTHER POLICE CUSTODY AND THE REHABILITATION REVIEW COMMITTEE DETERMINES HE OR SHE POSES A SIGNIFICANT AND UNREASONABLE RISK TO THE SAFETY OR SECURITY OF INCARCERATED PERSONS OR STAFF, BUT IN ANY SUCH CASE THE DECISION NOT TO DISCHARGE SUCH PERSON SHALL BE IMMEDIATELY AND AUTOMATICALLY SUBJECTED TO AN INDEPENDENT REVIEW BY THE JUSTICE CENTER ENTITY WITH OVERSIGHT RESPONSIBILITIES UNDER SECTION FOUR HUNDRED ONE-A OF THIS CHAPTER, WITH TIMELY NOTICE GIVEN TO THE INCARCERATED PERSON OF THE SUBMISSION OF THE CASE TO THE JUSTICE CENTER AND OF THE DECISION OF THE JUSTICE CENTER. IF THE JUSTICE CENTER DISAGREES WITH THE DECISION TO NOT DISCHARGE, THE RESIDENT WILL BE IMMEDIATELY RELEASED FROM THE RESIDENTIAL REHABILITATION UNIT. IF THE JUSTICE CENTER AGREES WITH THE DECISION TO NOT DISCHARGE, THE DISCHARGE PROCEDURES SET FORTH IN THIS PARAGRAPH SHALL APPLY INCLUDING ANNUAL REVIEWS BY THE JUSTICE CENTER OF A DECISION BY THE REHABILITATION REVIEW COMMITTEE TO REFUSE TO RELEASE A RESIDENT, HOWEVER, UNDER NO CIRCUMSTANCES SHALL ANY SUCH PERSON BE HELD IN THE RESIDENTIAL REHABILITATION UNIT FOR MORE THAN THREE YEARS UNLESS THE REHABILITATION REVIEW COMMITTEE DETERMINES HE OR SHE COMMITTED AN

1 ACT LISTED IN SUBPARAGRAPH (III) OF PARAGRAPH (J) OF THIS SUBDIVISION  
2 WITHIN ONE HUNDRED EIGHTY DAYS PRIOR TO THE EXPIRATION OF THE THREE YEAR  
3 PERIOD AND POSES A SIGNIFICANT AND UNREASONABLE RISK TO THE SAFETY OR  
4 SECURITY OF INCARCERATED PERSONS OR STAFF.

5 (V) AFTER EACH ASSESSMENT COMMITTEE AND REHABILITATION REVIEW COMMIT-  
6 TEE DECISION, IF A RESIDENT IS NOT DISCHARGED FROM THE RESIDENTIAL REHA-  
7 BILITATION UNIT, THE RESPECTIVE COMMITTEE SHALL SPECIFY IN WRITING (A)  
8 THE REASONS FOR THE DETERMINATION AND (B) THE PROGRAM, TREATMENT,  
9 SERVICE, AND/OR CORRECTIVE ACTION REQUIREMENTS FOR DISCHARGE. THE RESI-  
10 DENT SHALL BE GIVEN ACCESS TO THE PROGRAMS, TREATMENT AND SERVICES SPEC-  
11 IFIED, AND SHALL BE DISCHARGED FROM THE RESIDENTIAL REHABILITATION UNIT  
12 UPON COMPLETION UNLESS THE RESIDENT HAS COMMITTED AN ACT LISTED IN  
13 SUBPARAGRAPH (III) OF PARAGRAPH (J) OF THIS SUBDIVISION DURING THE  
14 PREVIOUS ONE HUNDRED TWENTY DAYS.

15 (VI) WHEN A RESIDENT IS DISCHARGED FROM A RESIDENTIAL REHABILITATION  
16 UNIT, ANY REMAINING SENTENCE TO SEGREGATED CONFINEMENT TIME WILL BE  
17 DISMISSED. IF A RESIDENT SUBSTANTIALLY COMPLETES HIS REHABILITATION  
18 PLAN, HE OR SHE WILL HAVE ALL GOOD TIME RESTORED UPON DISCHARGE FROM THE  
19 UNIT.

20 (M) ALL STAFF, INCLUDING SUPERVISORY STAFF, WORKING IN A SEGREGATED  
21 CONFINEMENT OR RESIDENTIAL REHABILITATION UNIT SHALL UNDERGO A MINIMUM  
22 OF FORTY HOURS OF TRAINING PRIOR TO WORKING ON THE UNIT AND TWENTY-FOUR  
23 HOURS ANNUALLY THEREAFTER, ON SUBSTANTIVE CONTENT DEVELOPED IN CONSULTA-  
24 TION WITH RELEVANT EXPERTS, INCLUDING TRAUMA, PSYCHIATRIC AND RESTORA-  
25 TIVE JUSTICE EXPERTS, ON TOPICS INCLUDING, BUT NOT LIMITED TO, THE  
26 PURPOSE AND GOALS OF THE NON-PUNITIVE THERAPEUTIC ENVIRONMENT AND  
27 DISPUTE RESOLUTION METHODS. PRIOR TO PRESIDING OVER ANY HEARINGS, ALL  
28 HEARING OFFICERS SHALL UNDERGO A MINIMUM OF FORTY HOURS OF TRAINING, AND  
29 EIGHT HOURS ANNUALLY THEREAFTER, ON RELEVANT TOPICS, INCLUDING BUT NOT  
30 LIMITED TO, THE PHYSICAL AND PSYCHOLOGICAL EFFECTS OF SEGREGATED  
31 CONFINEMENT, PROCEDURAL AND DUE PROCESS RIGHTS OF THE ACCUSED, AND  
32 RESTORATIVE JUSTICE REMEDIES.

33 (N) THE DEPARTMENT SHALL MAKE PUBLICLY AVAILABLE MONTHLY REPORTS OF  
34 THE NUMBER OF PEOPLE AS OF THE FIRST DAY OF EACH MONTH, AND SEMI-ANNUAL  
35 AND ANNUAL CUMULATIVE REPORTS OF THE TOTAL NUMBER OF PEOPLE, WHO ARE (I)  
36 IN SEGREGATED CONFINEMENT; AND (II) IN RESIDENTIAL REHABILITATION UNITS;  
37 ALONG WITH A BREAKDOWN OF THE NUMBER OF PEOPLE (III) IN SEGREGATED  
38 CONFINEMENT AND (IV) IN RESIDENTIAL REHABILITATION UNITS BY (A) AGE; (B)  
39 RACE; (C) GENDER; (D) MENTAL HEALTH LEVEL; (E) HEALTH STATUS; (F) DRUG  
40 ADDICTION STATUS; (G) PREGNANCY STATUS; (H) LESBIAN, GAY, BISEXUAL,  
41 TRANSGENDER, OR INTERSEX STATUS; AND (I) TOTAL CONTINUOUS LENGTH OF  
42 STAY, AND TOTAL LENGTH OF STAY IN THE PAST SIXTY DAYS, IN SEGREGATED  
43 CONFINEMENT OR A RESIDENTIAL REHABILITATION UNIT.

44 S 5. Section 401-a of the correction law is amended by adding a new  
45 subdivision 4 to read as follows:

46 4. THE JUSTICE CENTER SHALL ASSESS COMPLIANCE WITH THE TERMS OF, AND  
47 AT LEAST ANNUALLY REPORT ON AND MAKE RECOMMENDATIONS TO THE DEPARTMENT,  
48 LEGISLATURE, AND PUBLIC IN WRITING, REGARDING ALL ASPECTS OF SEGREGATED  
49 CONFINEMENT AND RESIDENTIAL REHABILITATION UNITS IN STATE CORRECTIONAL  
50 FACILITIES PURSUANT TO SECTION ONE HUNDRED THIRTY-SEVEN OF THIS CHAPTER,  
51 INCLUDING BUT NOT LIMITED TO POLICIES AND PRACTICES REGARDING: (A)  
52 PLACEMENT OF PERSONS; (B) SPECIAL POPULATIONS; (C) LENGTH OF TIME SPENT;  
53 (D) HEARINGS AND PROCEDURES; (E) CONDITIONS, PROGRAMS, SERVICES, CARE,  
54 AND TREATMENT; AND (F) ASSESSMENTS AND REHABILITATION PLANS, AND PROCE-  
55 DURES AND DETERMINATIONS MADE AS TO WHETHER PERSONS SHOULD REMAIN IN  
56 RESIDENTIAL REHABILITATION UNITS.

A. 8588

7

1 S 6. Subdivision 4 of section 45 of the correction law, as amended by  
2 section 15 of subpart A of part C of chapter 62 of the laws of 2011, is  
3 amended to read as follows:

4 4. (A) Establish procedures to assure effective investigation of  
5 grievances of, and conditions affecting, inmates of local correctional  
6 facilities. Such procedures shall include but not be limited to receipt  
7 of written complaints, interviews of persons, and on-site monitoring of  
8 conditions. In addition, the commission shall establish procedures for  
9 the speedy and impartial review of grievances referred to it by the  
10 commissioner of the department of corrections and community supervision.

11 (B) THE COMMISSION SHALL ALSO ASSESS COMPLIANCE WITH THE TERMS OF, AND  
12 AT LEAST ANNUALLY REPORT ON AND MAKE RECOMMENDATIONS TO THE DEPARTMENT,  
13 LEGISLATURE, AND PUBLIC, REGARDING ALL ASPECTS OF SEGREGATED CONFINEMENT  
14 AND RESIDENTIAL REHABILITATION UNITS IN FACILITIES GOVERNED BY SECTION  
15 FIVE HUNDRED-K OF THIS CHAPTER, INCLUDING BUT NOT LIMITED TO POLICIES  
16 AND PRACTICES FOR BOTH REGARDING: (I) PLACEMENT OF PERSONS; (II) SPECIAL  
17 POPULATIONS; (III) LENGTH OF TIME SPENT; (IV) HEARINGS AND PROCEDURES;  
18 (V) CONDITIONS, PROGRAMS, SERVICES, CARE, AND TREATMENT; AND (VI)  
19 ASSESSMENTS AND REHABILITATION PLANS, AND PROCEDURES AND DETERMINATIONS  
20 MADE AS TO WHETHER PERSONS SHOULD REMAIN IN RESIDENTIAL REHABILITATION  
21 UNITS.

22 S 7. This act shall take effect immediately.