

LAWS OF NEW YORK, 2008

CHAPTER 1

AN ACT to amend the correction law and the mental hygiene law, in relation to confinement conditions and treatment of convicted persons with serious mental illness

Became a law January 28, 2008, with the approval of the Governor.

Passed by a majority vote, three-fifths being present.

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

Section 1. Legislative findings. 1. The legislature finds that the needs of inmates with serious mental illness should be served by improved access to mental health treatment during incarceration. In particular, inmates with serious mental illness should be offered therapeutic care and treatment in residential mental health settings when doing so will not compromise the safety of inmates or other persons or the security of the facility. While in exceptional circumstances segregated confinement may sometimes be necessary to maintain such safety and security, even for inmates with serious mental illness, the state should strive to maintain such inmates with serious mental illness in less restrictive settings whenever it can safely do so.

2. When inmates with serious mental illness are placed in segregated confinement, they should receive a heightened level of care, including out-of-cell therapeutic programming and/or mental health treatment, when consistent with the safety of the inmate and other persons or the security of the facility. Such inmates with serious mental illness should also undergo periodic reassessments of their mental condition to determine whether diversion from segregated confinement to a less restrictive setting is appropriate.

3. This act creates a balanced approach to care and treatment of inmates with serious mental illness and the state's ability to ensure the safety of all inmates and employees and the security of prison facilities.

§ 2. Section 2 of the correction law is amended by adding ten new subdivisions 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30 to read as follows:

21. "Residential mental health treatment unit" means housing for inmates 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 inmate 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. Inmates placed in a residen-

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

tial 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 inmates 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 inmate 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 disciplinary confinement of an inmate in a special housing unit or in a separate keeplock housing unit. Special housing units and separate keeplock units are housing units that consist of cells grouped so as to provide separation from the general population, and may be used to house inmates confined pursuant to the disciplinary procedures described in regulations.

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 inmate 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 inmate'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 inmate 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 inmates 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 inmates with a major mental disorder, but such disorder is not as acute as that of inmates 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 inmates 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 inmates who may require limited intervention, excluding psychiatric medications.

§ 3. The opening paragraph of subdivision 6 of section 137 of the correction law, as amended by chapter 490 of the laws of 1974, is amended to read as follows:

[The] Except as provided in paragraphs (d) and (e) of this subdivision, the superintendent of a correctional facility may keep any inmate confined in a cell or room, apart from the accommodations provided for inmates 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:

§ 4. Paragraph (d) of subdivision 6 of section 137 of the correction law, as amended by chapter 490 of the laws of 1974, is relettered paragraph (f) and amended and two new paragraphs (d) and (e) are added to read as follows:

(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 inmates with serious mental illness, as defined in paragraph (e) of this subdivision, from segregated confinement, 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 inmate into segregated confinement 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 inmate 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 inmate into segregated confinement at a level one or level two facility, the inmate shall be assessed by a mental health clinician.

(B) Upon placement of an inmate into segregated confinement 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 inmate is at risk of suicide, a mental health clinician shall be consulted and appropriate safety precautions shall be taken. All inmates placed in segregated confinement at a level three or level four facility shall be assessed by a mental health clinician, within fourteen days of such placement into segregated confinement.

(C) At the initial assessment, if the mental health clinician finds that an inmate suffers from a serious mental illness, 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 high-

est 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 fourteen days of the initial assessment, and if the result of such process is that the inmate should be removed from segregated confinement, such removal shall occur as soon as practicable, but in no event more than seventy-two hours from the completion of the administrative process.

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

(iii) Inmates with serious mental illness who are not diverted or removed from segregated confinement shall be offered a heightened level of care, involving a minimum of two hours each day, five days a week, 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 inmate 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 inmate'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 inmates 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 inmate remains in segregated confinement. 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) Inmates with serious mental illness who are not diverted or removed from segregated confinement shall not be placed on a restricted diet, unless there has been a written determination that the restricted diet is necessary for reasons of safety and security. If a restricted diet is imposed, it shall be limited to seven days, except in the exceptional circumstances where the joint case management committee determines that limiting the restricted diet to seven days would pose an unacceptable risk to the safety and security of inmates or staff. In such case, the need for a restricted diet shall be reassessed by the joint case management committee every seven days.

(v) All inmates in segregated confinement in a level one or level two 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 fourteen days of their initial mental health assessment, and additional interviews at least every thirty days thereafter, unless the mental health clinician at the most recent interview recommends an earlier interview or assessment. All inmates in segregated confinement 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 inmate 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 inmate'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 inmate 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 inmate 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.

§ 5. Section 401 of the correction law, as added by chapter 766 of the laws of 1976, is amended to read as follows:

§ 401. Establishment of programs inside correctional facilities. **1.** The commissioner, in cooperation with the commissioner of mental ~~[hygiene]~~ 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 inmates confined in state correctional facilities who are in need of psychiatric services but who do not require hospitalization for the treatment of mental illness. Inmates 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 administration and operation of programs established pursuant to this section shall be the joint responsibility of the commissioner of mental ~~[hygiene]~~ health and the commissioner. The professional mental health care personnel, and their administrative and support staff, for such programs shall be employees of the ~~[department of mental hygiene]~~ 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 inmate, may determine that an inmate'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 inmates or staff. Such determination shall be documented in writing and 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 inmate'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 inmate's mental condition and any safety and security concerns that would be posed by the inmate's access to such out-of-cell therapeutic programming. The joint case management committee or treatment team shall recommend that the inmate 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 inmate 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) Inmates in a residential mental health treatment unit shall receive property, services and privileges similar to inmates confined in the general prison population, provided however, the department may impose general limitations on the quantity and type of property all inmates on the unit are permitted to have in their cells and inmate access to programs that are more restrictive than for general population inmates 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 inmate on the unit for therapeutic and/or security reasons which are not inconsistent with the inmate's mental health needs. If any such restrictions on property, services or privileges are imposed on a particular inmate, 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 inmate who is housed in a residential mental health treatment unit.

3. Misbehavior reports will not be issued to inmates with serious mental illness for refusing treatment or medication, however, an inmate 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 inmate requiring confinement to a cell or room shall continue to run while the inmate 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 inmate's residential mental health treatment unit at least once every three months to determine whether based upon the inmate's mental health status and safety and security concerns, the inmate's disciplinary sanction should be reduced and/or the inmate 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 inmates in other residential mental health treatment unit models.

5. (a) An inmate 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, except in exceptional circumstances where such inmate's conduct poses a significant and unreasonable risk to the safety of inmates or staff, or to the security of the facility. Further, in the event that such a sanction is imposed, an inmate 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 inmate's conduct poses an immediate unacceptable threat to the safety of inmates or staff, or to the security of the facility an inmate may be immediately moved to segregated confinement. The determination that an immediate transfer to segregated confinement 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 inmate's mental condition and safety and security concerns. The joint case management committee may only thereafter recommend the removal of the inmate in exceptional circumstances where the inmate poses a significant and unreasonable risk to the safety of inmates or staff or to the security of the facility. In the event that the inmate was immediately moved to segregated confinement, the joint case management committee may recommend that the inmate continue to serve such sanction only in exceptional circumstances where the inmate poses a significant and unreasonable risk to the safety of inmates or staff or to the security of the facility. If a determination is made that the inmate 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 inmate who was immediately transferred to segregated confinement should be removed from segregated confinement, 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 inmates, 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 inmates with mental illness. Such training may be provided by the office of mental health or the New York state commission on quality of care and advocacy for persons with disabilities. 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. The department shall provide additional training on these topics on an ongoing basis as it deems appropriate.

§ 6. The correction law is amended by adding a new section 401-a to read as follows:

§ 401-a. Oversight responsibilities of the New York state commission on quality of care and advocacy for persons with disabilities. 1. The New York state commission on quality of care and advocacy for persons with disabilities ("commission") shall be responsible for monitoring the quality of mental health care provided to inmates pursuant to article forty-five of the mental hygiene law. The commission shall have direct and immediate access to all areas where state prisoners are housed, and to clinical and department records relating to inmates' clinical conditions. The commission shall maintain the confidentiality of all patient-specific information.

2. The commission 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 commission may recommend to the department and the office of mental health that inmates 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 inmates with serious mental illness from segregated confinement to residential mental health treatment units. The commission shall include in its annual report to the governor and the legislature pursuant to subdivision (g) of section 45.07 of the mental hygiene law, a description of the state's progress in complying with this article, which shall be publicly available.

3. The commission 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 inmates with serious mental illness. Such committee shall advise the commission on its oversight responsibilities pursuant to this section and article forty-five of the mental hygiene law. The committee may also make recommendations to the commission 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.

§ 7. Section 45.07 of the mental hygiene law is amended by adding a new subdivision (z) to read as follows:

(z) Monitor and make recommendations regarding the quality of care provided to inmates with serious mental illness, including those who are in a residential mental health treatment unit or segregated confinement in facilities operated by the department of correctional services, and oversee compliance with paragraphs (d) and (e) of subdivision six of section one hundred thirty-seven, and section four hundred one, of the correction law. Such responsibilities shall be carried out in accordance with section four hundred one-a of the correction law.

§ 8. This act shall take effect immediately; provided however, that:

(a) sections one, two, three, four and five of this act and subdivisions 2 and 3 of section 401-a of the correction law as added by section six of this act shall take effect two years after the date that the commissioner of correctional services certifies to the legislative bill drafting commission that the first residential mental health unit constructed by the department of correctional services is completed and ready to receive inmates, provided, however that such sections shall take effect no later than July 1, 2011;

(b) sections six and seven of this act shall take effect July 1, 2008; and

(c) the commissioner of mental health and the commissioner of correctional services are immediately authorized to promulgate rules and regulations necessary to implement the provisions of this act on their respective effective dates.

The Legislature of the STATE OF NEW YORK **ss:**

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOSEPH L. BRUNO
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly