

GC
VETO #225 CHAPTER _____

LAWS OF 20 06

SENATE BILL _____

ASSEMBLY BILL 4982-A

STATE OF NEW YORK

4982--A

R. R. 360

2005-2006 Regular Sessions

IN ASSEMBLY

February 15, 2005

Introduced by M. of A. AUBRY -- Multi-Sponsored by -- M. of A. COLTON, GOTTFRIED -- read once and referred to the Committee on Correction -- recommitted to the Committee on Rules in accordance with Assembly Rule 3, sec. 2 -- amended on the special order of third reading, ordered reprinted as amended, retaining its place on the special order of third reading

AN ACT to amend the correction law, in relation to persons authorized to visit correctional facilities

S 512-A Nozzolio

DATE RECEIVED BY GOVERNOR:

JUN 30 2006

ACTION MUST BE TAKEN BY:

JUL 12 2006

DATE GOVERNOR'S ACTION TAKEN:

JUL 07 2006

SENATE VOTE ___ Y ___ N

HOME RULE MESSAGE ___ Y ___ N

DATE _____

ASSEMBLY VOTE ___ Y ___ N

DATE _____



STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

TO THE ASSEMBLY:

I am returning herewith, without my approval, the following bill:

JUL 07 2006

Assembly Bill Number 4982-A, entitled:

V E T O # 225 "AN ACT to amend the correction law, in relation to persons authorized to visit correctional facilities"

NOT APPROVED

This bill would amend the Correction Law to allow members of the State Legislature to designate certain employees of the Department of Correctional Services ("DOCS") to accompany them on visits to correctional facilities and to add such employees to the list of persons authorized to visit any correctional facility at any time. The bill would take effect immediately.

This bill is opposed by both DOCS and the State Commission of Correction ("SCOC"). DOCS is concerned that the bill would interfere with its ability to supervise, manage, secure and control employees and facilities under its jurisdiction. The SCOC is concerned that the bill is unnecessary and could compromise security within correctional facilities. In addition, by authorizing legislators to direct the movement of Executive branch employees, the bill raises fundamental separation of powers concerns. I am constrained to disapprove the bill based on these objections as well as the lack of any demonstrated necessity for the bill.

The bill is disapproved.

000003

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(e)**

BILL NUMBER: A4982A

SPONSOR: Aubry (MS)

TITLE OF BILL: An act to amend the correction law, in relation to persons authorized to visit correctional facilities

PURPOSE: This legislation would expand those who are authorized to visit correctional facilities, to include employees of the Department of Correctional Services who are designated by a Member of the Legislature to accompany them during their visit.

SUMMARY OF PROVISIONS: Section one of this measure amends subdivision 1 of Section 146 of the Correction Law, relating to persons authorized to visit correctional facilities.

JUSTIFICATION: Under current law, certain persons are authorized to visit, at their pleasure, all correctional facilities. Included in the list of persons authorized to visit are Members of the Legislature.

Because of the limited authorization in this Section, the Members of the Legislature do not have the ability to designate an employee of the Department of Corrections to accompany them if they desire.

This measure is necessary to expand those who are authorized to visit correctional facilities, to include employees of the Department of Correctional Services who are designated by a Member of the Legislature to accompany them during their visit.

LEGISLATIVE HISTORY: A8416 committed to rules in 2004

FISCAL IMPLICATIONS: None.

EFFECTIVE DATE: This act shall take effect immediately.



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ELIOT SPITZER
Attorney General

Legislative Bureau

TO: COUNSEL TO THE GOVERNOR

Re: SENATE

ASSEMBLY 4982-A

Inasmuch as this bill does not appear to relate to the functions of the Department of Law, I am not commenting thereon. However, if there is a particular aspect of the bill upon which you wish comment, please advise me.

ELIOT SPITZER
ATTORNEY GENERAL

Date : **May 30, 2006**

000005

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
THE HARRIMAN STATE CAMPUS
1220 WASHINGTON AVENUE
ALBANY, N.Y. 12226-2050

GLENN S. GOORD
COMMISSIONER

May 26, 2006

Honorable Richard Platkin
Counsel to Governor
Executive Chamber
State Capitol
Albany, New York 12224

Re: A4982

Dear Mr. Platkin:

The above-referenced bill, A4982, would amend Correction Law section 146 to authorize any member of the Legislature to designate any Department employee to accompany such member on a tour of any correctional facility. Under existing law, each member of the Legislature is authorized to visit any correctional facility at will. The Department of Correctional Services respectfully urges that the Governor veto this bill for a number of reasons.

First, the Department has established protocols that ensure ample access to its correctional facilities by members of the Legislature. In fact, though not required by the statute, such access is also extended to the legislative aides that may accompany the members of the Legislature. Furthermore, since members of the Legislature can visit at will, this also means that a visit to a correctional facility can take place unannounced, that is, without any advance warning. Such visit can also extend to all areas of the facility, including those areas where the security concerns are the most heightened, such as the special housing unit.

In accordance with Correction Law section 112, the Commissioner of Correctional Services is charged with "the superintendence, management and control of the correctional facilities in the department and of the inmates confined therein, and of all matters related to the government, discipline, contracts and fiscal concerns thereof." Furthermore, although Correction Law section 146 identifies those government officials who may visit a correctional facility at will, such as members of the Legislature, judges and district attorneys, this statute also accords due deference to the oversight authority of the Commissioner by further specifying "no other person... shall be permitted to enter a correctional facility except by authority of the commissioner of correction..."

As presently set forth in Correction Law section 146, the list of people who can visit a prison at will is carefully circumscribed for good reason. Prisons are complex institutions to operate and manage. They can also be dangerous and accordingly, security considerations permeate virtually every aspect of day-to-day facility operations. Current law wisely restricts this list of at-will visitors to high ranking government officials in positions of authority who, in one form or another, are accountable for all of their actions to the general public. To now potentially afford to any Department employee the same unfettered access to a correctional facility that is presently afforded to any member of the Legislature, is an unwise and unwarranted quantum

000006

leap that directly undermines the authority of the Commissioner to be responsible for the oversight of the entire system.

There presently are in excess of thirty-one thousand employees in the Department's workforce which includes approximately 21,000 security staff and 10,000 civilian staff. While the overwhelming majority of Department employees are professional, hardworking and law-abiding, as can be expected with any workforce of such large dimension, at any one time there are a small number of employees who are not in good standing, but instead, are under investigation for potential criminal law violations and/or serious workplace misconduct that could lead to termination. It is also possible that a Department employee may be suspended or be placed on administrative leave pending the outcome of an investigation or disciplinary proceedings. This bill does not differentiate such employees from its coverage. Because of such uncertainties, it is crucial that the decision whether or not to allow a Department employee, or for that matter any other person, to accompany a member of the Legislature on a correctional facility tour, continue to rest exclusively with the Commissioner.

Moreover, the Department's protocols already require the facility superintendent, or an executive team member, to escort the member of the Legislature at all times while in the facility. Hence, there is no articulable rationale for this bill. In fact, the memo in support curtly states that the bill is needed to expand the list to include Department employees. It gives no explanatory basis whatsoever to justify the extremely significant expansion of the list in this manner.

It should be further noted that presently, union officials on behalf of correction officers, sergeants, and lieutenants, have access to the Department's facilities during the processing of contractual and disciplinary grievances pursuant to Sections 7.3 and 8.5 of the New York State Correctional Officers & Police Benevolent Association (NYSCOPBA) contract and the Council 82 contract. This bill may potentially upset the balance between management and the union, as countenanced by these agreements, since a union representative could conceivably attempt to use a legislative visit as a pretext in order to advance a union issue.

Lastly, the wording of the statute encompasses every employee of the Department of Correctional Services. Therefore, it is quite possible that I as Commissioner, a member of my executive team, or another high-ranking Central Office person, might be designated at the last minute as the Department employee to accompany a member of the Legislature on a facility tour. For obvious reasons, such a happenstance could prove to be disruptive for the operations of the Department.

In light of the foregoing, the Department of Correctional Services strongly urges that the Governor veto this bill.

Should you have any questions, please do not hesitate to contact me.

God Bless America,

Glenn S. Goord
Commissioner

cc: John R. Patterson, Jr., Executive Deputy Commissioner
Anthony J. Annucci, Deputy Commissioner & Counsel

**STATE OF NEW YORK
DIVISION OF CRIMINAL JUSTICE SERVICES**

May 25, 2006

Honorable Richard Platkin
Counsel to the Governor
Executive Chamber
State Capitol - Room 225
Albany, NY 12224

RE: Assembly Bill Number 4982-A
No Position

Dear Mr. Platkin:

This is in response to your request for comment on the above-referenced legislation that amends the Correction Law in relation to persons authorized to visit correctional facilities.

This legislation would expand the list of those who are authorized to visit all correctional facilities to include employees of the Department of Correctional Services who are designated by a state legislator to accompany such legislator during a visit. It does not appear that this bill would have any impact on the Division's operations. Accordingly, the Division of Criminal Justice Services takes **no position** on **A.4982-A**.

Thank you for the opportunity to comment on this legislation.

Very truly yours,

Gina L. Bianchi
Deputy Commissioner and Counsel

000008



STATE OF NEW YORK

DEPARTMENT OF CIVIL SERVICE
THE STATE CAMPUS
ALBANY, NEW YORK 12239
www.cs.state.ny.us

GEORGE E. PATAKI
GOVERNOR

DANIEL E. WALL
COMMISSIONER

JOHN F. BARR
EXECUTIVE
DEPUTY COMMISSIONER

MEMORANDUM

TO: Honorable Richard Platkin
Counsel to the Governor

FROM: Brian S. Reichenbach
Counsel

SUBJECT: A4982-A (Introduced by M. of A. Aubry)

DATE: May 31, 2006

STATUTES INVOLVED: Correction Law Section 146 (1)

EFFECTIVE DATE: Immediately

RECOMMENDATION: NO OBJECTION

DISCUSSION:

This bill amends the correction law to expand the list of those authorized to visit correctional facilities to include employees of the Department of Correctional Services who are designated by a member of the legislature to accompany them during their visit.

This bill has no impact upon the operations of the Department of Civil Service and does not affect the administration of the Civil Service Law, therefore, we have no objection to this legislation.



STATE OF NEW YORK • EXECUTIVE DEPARTMENT

STATE COMMISSION OF CORRECTION

80 WOLF ROAD, 4TH FLOOR
ALBANY, NEW YORK 12205-2670
(518) 485-2346
FAX (518) 485-2467

CHAIRMAN/COMMISSIONER

Alan J. Croce

COMMISSIONERS

Frederick C. Lamy
Frances T. Sullivan

June 20, 2006

Richard Platkin, Esq.
Counsel to the Governor
Executive Chamber
State Capitol
Albany, NY 12224

Re: A.4982-A

Dear Mt. Platkin:

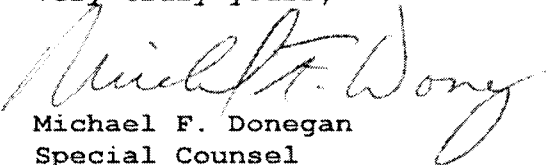
The above referenced bill would amend the Correction Law section 146 to authorize any member of the Legislature to designate any Department employee to accompany such member on a tour of any correctional facility. The Correction Law currently authorizes each member of the Legislature to visit any correctional facility at will. The Commission of Correction respectfully urges that the Governor veto this bill.

The current state of the Correction Law provides more than adequate access to the members of the Legislature while at the same time allowing the Department of Correctional Services to maintain necessary and proper controls of admission of persons to secure facilities.

The proposed legislation could create administrative problems for the Department of Correctional Services in ensuring security in State correctional facilities. For these reasons, the Commission again respectfully suggests the Governor veto the legislation in question.

Thank you for the opportunity to comment on this bill.

Very truly yours,


Michael F. Donegan
Special Counsel

000010

Jerry Connolly/NYEC
06/30/2006 03:02 PM

To Susan Knapp
cc
bcc
Subject A4982-A

Any comment or fiscal on this? It's been called down and my comments are due on Wednesday.

000011

✓ 225


Dear Governor Pataki,

Under current law, certain persons are authorized to visit, at their pleasure, all correctional facilities. Included in the list of persons authorized to visit are Members of the Legislature. Because of the limited authorization in this Section, the Members of the Legislature do not have the ability to designate an employee of the Department of Corrections to accompany them if they desire. This measure is necessary to expand those who are authorized to visit correctional facilities, to include employees of the Department of Correctional Services who are designated by a Member of the Legislature to accompany them during their visit.

This legislation was passed overwhelmingly by both houses of the legislature, realizing this necessary element was missing. **A.4982 (Aubry)/ S. 512 (Nozzolio)** would expand those who are authorized to visit correctional facilities, to include employees of the Department of Correctional Services who are designated by a Member of the Legislature to accompany them during their visit.

I hope you will agree that all elected officials should have the ability to choose who would accompany them during their visits of correctional facilities, in order to receive a more balanced view. This unbiased and objective visit will allow the legislator to better address concerns in the area of security, inmate programs, and facility complaints when considering future legislation.

Thank you in advance


EDWARD WARREN

000012

7-16-06 V 225

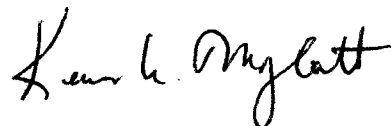
Dear Governor Pataki,

Under current law, certain persons are authorized to visit, at their pleasure, all correctional facilities. Included in the list of persons authorized to visit are Members of the Legislature. Because of the limited authorization in this Section, the Members of the Legislature do not have the ability to designate an employee of the Department of Corrections to accompany them if they desire. This measure is necessary to expand those who are authorized to visit correctional facilities, to include employees of the Department of Correctional Services who are designated by a Member of the Legislature to accompany them during their visit.

This legislation was passed overwhelmingly by both houses of the legislature, realizing this necessary element was missing. **A.4982 (Aubry)/ S. 512 (Nozzolio)** would expand those who are authorized to visit correctional facilities, to include employees of the Department of Correctional Services who are designated by a Member of the Legislature to accompany them during their visit.

I hope you will agree that all elected officials should have the ability to choose who would accompany them during their visits of correctional facilities, in order to receive a more balanced view. This unbiased and objective visit will allow the legislator to better address concerns in the area of security, inmate programs, and facility complaints when considering future legislation.

Thank you in advance,



000013

V 225

(2)

Dear Governor Pataki,

Under current law, certain persons are authorized to visit, at their pleasure, all correctional facilities. Included in the list of persons authorized to visit are Members of the Legislature. Because of the limited authorization in this Section, the Members of the Legislature do not have the ability to designate an employee of the Department of Corrections to accompany them if they desire. This measure is necessary to expand those who are authorized to visit correctional facilities, to include employees of the Department of Correctional Services who are designated by a Member of the Legislature to accompany them during their visit.

This legislation was passed overwhelmingly by both houses of the legislature, realizing this necessary element was missing. **A.4982 (Aubry)/ S. 512 (Nozzolio)** would expand those who are authorized to visit correctional facilities, to include employees of the Department of Correctional Services who are designated by a Member of the Legislature to accompany them during their visit.

I hope you will agree that all elected officials should have the ability to choose who would accompany them during their visits of correctional facilities, in order to receive a more balanced view. This unbiased and objective visit will allow the legislator to better address concerns in the area of security, inmate programs, and facility complaints when considering future legislation.

Gary Donnermuth Jr.

Thank you in advance,

GARY DONNERMUTH JR

000014

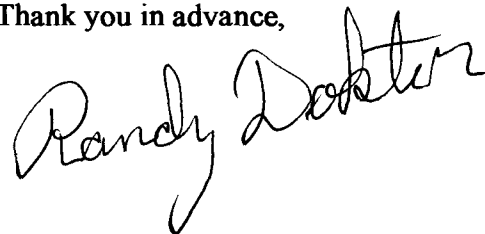
Dear Governor Pataki,

Under current law, certain persons are authorized to visit, at their pleasure, all correctional facilities. Included in the list of persons authorized to visit are Members of the Legislature. Because of the limited authorization in this Section, the Members of the Legislature do not have the ability to designate an employee of the Department of Corrections to accompany them if they desire. This measure is necessary to expand those who are authorized to visit correctional facilities, to include employees of the Department of Correctional Services who are designated by a Member of the Legislature to accompany them during their visit.

This legislation was passed overwhelmingly by both houses of the legislature, realizing this necessary element was missing. **A.4982 (Aubry)/ S. 512 (Nozzolio)** would expand those who are authorized to visit correctional facilities, to include employees of the Department of Correctional Services who are designated by a Member of the Legislature to accompany them during their visit.

I hope you will agree that all elected officials should have the ability to choose who would accompany them during their visits of correctional facilities, in order to receive a more balanced view. This unbiased and objective visit will allow the legislator to better address concerns in the area of security, inmate programs, and facility complaints when considering future legislation.

Thank you in advance,

A handwritten signature in black ink that reads "Randy Dabner". The signature is written in a cursive style with a large, sweeping initial "R".

V225

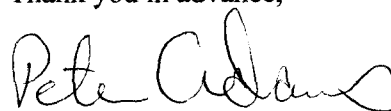
Dear Governor Pataki,

Under current law, certain persons are authorized to visit, at their pleasure, all correctional facilities. Included in the list of persons authorized to visit are Members of the Legislature. Because of the limited authorization in this Section, the Members of the Legislature do not have the ability to designate an employee of the Department of Corrections to accompany them if they desire. This measure is necessary to expand those who are authorized to visit correctional facilities, to include employees of the Department of Correctional Services who are designated by a Member of the Legislature to accompany them during their visit.

This legislation was passed overwhelmingly by both houses of the legislature, realizing this necessary element was missing. **A.4982 (Aubry)/ S. 512 (Nozzolio)** would expand those who are authorized to visit correctional facilities, to include employees of the Department of Correctional Services who are designated by a Member of the Legislature to accompany them during their visit.

I hope you will agree that all elected officials should have the ability to choose who would accompany them during their visits of correctional facilities, in order to receive a more balanced view. This unbiased and objective visit will allow the legislator to better address concerns in the area of security, inmate programs, and facility complaints when considering future legislation.

Thank you in advance,



000016

V 225


Dear Governor Pataki,

Under current law, certain persons are authorized to visit, at their pleasure, all correctional facilities. Included in the list of persons authorized to visit are Members of the Legislature. Because of the limited authorization in this Section, the Members of the Legislature do not have the ability to designate an employee of the Department of Corrections to accompany them if they desire. This measure is necessary to expand those who are authorized to visit correctional facilities, to include employees of the Department of Correctional Services who are designated by a Member of the Legislature to accompany them during their visit.

This legislation was passed overwhelmingly by both houses of the legislature, realizing this necessary element was missing. **A.4982 (Aubry)/ S. 512 (Nozzolio)** would expand those who are authorized to visit correctional facilities, to include employees of the Department of Correctional Services who are designated by a Member of the Legislature to accompany them during their visit.

I hope you will agree that all elected officials should have the ability to choose who would accompany them during their visits of correctional facilities, in order to receive a more balanced view. This unbiased and objective visit will allow the legislator to better address concerns in the area of security, inmate programs, and facility complaints when considering future legislation.

Thank you in advance,


Dale Villegas

000017

STATE OF NEW YORK

4982--A

R. R. 360

2005-2006 Regular Sessions

IN ASSEMBLY

February 15, 2005

Introduced by M. of A. AUBRY -- Multi-Sponsored by -- M. of A. COLTON, GOTTFRIED -- read once and referred to the Committee on Correction -- recommitted to the Committee on Rules in accordance with Assembly Rule 3, sec. 2 -- amended on the special order of third reading, ordered reprinted as amended, retaining its place on the special order of third reading

AN ACT to amend the correction law, in relation to persons authorized to visit correctional facilities

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

- 1 Section 1. Subdivision 1 of section 146 of the correction law, as
 2 amended by section 3 of part E of chapter 56 of the laws of 2005, is
 3 amended to read as follows:
 4 1. The following persons shall be authorized to visit at pleasure all
 5 correctional facilities: The governor and lieutenant-governor, commis-
 6 sioner of general services, secretary of state, comptroller and attor-
 7 ney-general, members of the commission of correction, members of the
 8 legislature and an employee of the department designated by the member
 9 of the legislature if such member elects to be so accompanied, judges of
 10 the court of appeals, supreme court and county judges, district attor-
 11 neys and every minister of the gospel having charge of a congregation in
 12 the town wherein any such facility is situated. No other person not
 13 otherwise authorized by law shall be permitted to enter a correctional
 14 facility except by authority of the commissioner [~~of correction~~] under
 15 such regulations as the commissioner shall prescribe. The provisions of
 16 this section shall not apply to such portion of a correctional facility
 17 in which inmates under sentence of death are confined.
 18 § 2. This act shall take effect immediately.

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

LBD00153-03-6