

A message from the Governor  
was received and read in the words  
following



STATE OF NEW YORK  
EXECUTIVE CHAMBER  
ALBANY 12224



TO THE SENATE:

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

Senate Bill Number 4734-A, entitled:

NOV 25 2003

VETO # 185

"AN ACT to amend the correction law, in relation to custody and supervision of persons in correctional facilities"

NYSCOPBA LEGISLATIVE  
DEPARTMENT

NOT APPROVED

This bill would require enumerated categories of police officers and peace officers in the competitive, non-competitive or exempt classes of the civil service to maintain custody and supervision of inmates in correctional facilities, including state correctional facilities and local correctional facilities. The bill would not limit the authority of the Commissioner of the Department of Correctional Services ("DOCS") to enter into certain types of contracts currently authorized by law, and would not limit the responsibility of the Division of Parole to supervise inmates or parolees while away from an institution or while confined at a drug treatment campus pursuant to specified sections of law. This bill would also exempt an employee or individual under contract with a correctional facility who does not supervise inmates as his or her primary responsibility from the requirement that only police officers or peace officers supervise inmates. Additionally, this bill would permit 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 to positions of authority whose duties include overall security of the Department of Correction. This bill would also prohibit the private ownership or operation of correctional facilities, except as otherwise provided. This bill would take effect 90 days after it shall have become a law.

I strongly support the sponsors' objective of ensuring that correctional facilities in New York State continue to be operated by state and local governments. Indeed, in recent years I have approved bills pertaining to the oversight, management and operation of correctional facilities in Westchester County and New York City. I approved those measures, however, after ensuring that they would not hinder the ability of the locality to manage and operate the facility and to employ or contract with individuals whose primary duties and responsibilities consist of administering or providing programs or services to the inmates. While this bill improves upon similar bills I disapproved in 2001 and 2002 (See: Veto Message No. 86 of 2001 and Veto Message No. 25 of 2002), I am constrained to disapprove this bill because it fails to fully address the concerns raised in my prior veto messages and could undermine the recent legislation I approved with regard to New York City.

First, while this bill attempts to enumerate all of the categories of police officers and peace officers who may be responsible for the supervision and custody of inmates, certain categories of officers have been excluded. Thus, for example, I am advised that cell block attendants employed by the City of Buffalo, investigators employed by District Attorney's offices and special investigators employed as a part of the statewide organized crime task force often have responsibility for the supervision and custody of individuals and were not included in this bill. The failure to include these categories of police and peace officers in the bill would preclude them from continuing to perform certain aspects of their jobs. In addition, as noted in previous disapproval messages, some localities currently hire part-time employees to supervise inmates and it is not clear whether such employees would be covered under this bill.

Second, while the bill purports to carve out an exception for employees and individuals who contract with the governmental entity to provide services to inmates and provide incidental supervision as a result, the language of this exception is unduly narrow. The specific provision that deals with the ability to enter into contracts applies only to the Commissioner of the Department of Correctional Services and does not apply to any local correctional facilities. In addition, the language of the bill suggests that this exception is intended to apply only to current employees and individuals who currently are under contract with the locality, and thus does not confer any authority upon the localities to prospectively hire or contract with any individuals who do not meet the aforementioned requirements.

Finally, it is unclear whether the bill is intended to cover secure youth facilities in addition to DOCS and local facilities. If this bill is intended to cover secure youth facilities, all officers who are responsible for custody and supervision of those inmates would need to be covered by the bill.

The bill is disapproved.

*M. E. Patrici*