

JM VETO # *V6767* CHAPTER _____

LAWS OF 20 *10*

SENATE BILL _____

ASSEMBLY BILL *11330-A*

STATE OF NEW YORK

11330--A

IN ASSEMBLY

June 3, 2010

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Aubry, Wright, Benjamin, Gibson, Barron, Peoples-Stokes, Duprey, Finch, Giglio, Gottfried, Lupardo, McEnery, Millman, Molinaro, Reilly, Sayward, Schimel, Stirpe) -- read once and referred to the Committee on Correction -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the correction law, in relation to requiring certain reports to the legislature regarding correctional facilities

S. 8022 Hascell-Thompson

OFFICE OF THE GOVERNOR
LEGISLATIVE DEPARTMENT
(CA)

*Veto 6767
Bill Jacket
A 11330
NYSCO/BA
institute Population
Reporting Legislation*

DATE RECEIVED BY GOVERNOR:

AUG 03 2010

ACTION MUST BE TAKEN BY:

AUG 14 2010

DATE GOVERNOR'S ACTION TAKEN:

AUG 13 2010



STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

VETO #6767

TO THE ASSEMBLY:

AUG 13 2010

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

Assembly Bill Number 11330-A, entitled:

“AN ACT to amend the correction law, in relation to requiring certain reports to the legislature regarding correctional facilities”

NOT APPROVED

This bill would expand the types of information the Department of Correctional Services (DOCS) must report annually to the Legislature on the staffing and capacity of the State prison system. The bill would also require DOCS to include a report on the impact of a proposed prison closure on prison staff and programming when issuing a formal announcement of the closure of a facility. I understand that a significant purpose of the bill is to evaluate whether proposed facility closures are necessary.

I am constrained to veto this bill for three reasons. First, the level of detail that would be required in the annual report is extraordinary and unnecessary. Further, in many cases its usefulness to policymakers would be very limited, as it would result in a static “snapshot” of State correctional facilities at a particular point in time, but would provide little understanding of the dynamic operation of the system that is required to make decisions about safe and efficient management. I do not believe that the significant burdens that would be imposed on DOCS by this bill are justified by the value of the additional information that would be produced.

Second, the bill would require DOCS to provide detailed information about the effect of a proposed prison closure on staff a full year before the closure, although much of this information is not available so far in advance. The result would be inaccurate guesswork, which would obfuscate rather than clarify debates about such closures.

Third, because the bill would impose new obligations on DOCS, new staff would be needed to gather and collate the required data. The Legislature identifies no source of funds to support this function. To mandate that DOCS comply with the proposed reporting requirements would be irresponsible in light of the current financial situation.

The bill is disapproved.

STATE OF NEW YORK

11330--A

IN ASSEMBLY

June 3, 2010

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Aubry, Wright, Benjamin, Gibson, Barron, Peoples-Stokes, Duprey, Finch, Giglio, Gottfried, Lupardo, McEneny, Millman, Molinaro, Reilly, Sayward, Schimel, Stirpe) -- read once and referred to the Committee on Correction -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the correction law, in relation to requiring certain reports to the legislature regarding correctional facilities

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

1 Section 1. Subdivision 4 of section 29 of the correction law, as
 2 amended by section 1 of part R of chapter 56 of the laws of 2005, is
 3 amended to read as follows:
 4 4. ~~[The]~~ On or before the first day of February, two thousand eleven,
 5 and every year thereafter, the commissioner ~~[of the department of~~
 6 ~~correctional services]~~ shall provide ~~[an annual]~~ a comprehensive report
 7 to the legislature ~~[on the staffing of correction officers and~~
 8 ~~correction sergeants in state correctional facilities. Such report shall~~
 9 ~~include, but not be limited to the following factors: the number of~~
 10 ~~security posts on the current plot plan for each facility that have been~~
 11 ~~closed on a daily basis, by correctional facility security classifica-~~
 12 ~~tion (minimum, medium and maximum); the number of security positions~~
 13 ~~eliminated by correctional facility since two thousand compared to the~~
 14 ~~number of inmates incarcerated in each such facility; a breakdown by~~
 15 ~~correctional facility security classification (minimum, medium, and~~
 16 ~~maximum) of the staff hours of overtime worked, by year since two thou-~~
 17 ~~sand and the annual aggregate costs related to this overtime. In addi-~~
 18 ~~tion, such report shall be delineated by correctional facility security~~
 19 ~~classification, the annual number of security positions eliminated, the~~
 20 ~~number of closed posts and amount of staff hours of overtime accrued as~~
 21 ~~well as the overall overtime expenditures that resulted]~~ evaluating the
 22 capacity and staffing of the state prison system. Such report shall be
 23 provided to the temporary president of the senate, the speaker of the
 24 assembly, the minority leader of the senate, the minority leader of the

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

LBD17314-02-0

A. 11330--A

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1 assembly, and the chairs of the senate finance, assembly ways and means,
2 senate crime victims, crime and [corrections] correction and assembly
3 correction committees [~~by December thirty first~~]. Such report shall
4 include, but not be limited to, the following:

5 (a) information on the staffing of correction officers and correction
6 sergeants in state correctional facilities including: the number of
7 security posts on the current plot plan for each facility that have been
8 closed on a daily basis, by correctional facility security classifica-
9 tion (minimum, medium and maximum); the number of security positions
10 eliminated by correctional facility since the year two thousand compared
11 to the number of inmates incarcerated in each such facility; a breakdown
12 by correctional facility security classification (minimum, medium, and
13 maximum) of the staff hours of overtime worked, by year since the year
14 two thousand and the annual aggregate costs related to this overtime.
15 The report shall also include the ratio of all security staff to inmates
16 at each correctional facility. In addition, such information shall be
17 delineated by correctional facility security classification, the annual
18 number of security positions eliminated, the number of closed posts and
19 amount of staff hours of overtime accrued as well as the overall over-
20 time expenditures that resulted;

21 (b) the total number of correctional facilities in operation which are
22 maintained by the department, the security level of each such facility,
23 the number of inmates at each such facility, the total number of beds at
24 each correctional facility, and the number of empty beds, if any, at
25 each such facility with an explanation as to the type of bed that is
26 empty. When reporting on the total number of beds and empty beds, the
27 commissioner shall differentiate between general confinement beds and
28 other types of specialized or restricted beds within the system, includ-
29 ing but not limited to infirmary beds, beds utilized for disciplinary
30 purposes, shock incarceration beds, work release beds, substance abuse
31 and mental health treatment beds and any other type of specialized or
32 restricted beds. The commissioner shall also include information
33 regarding the necessity to maintain such specialized and restricted beds
34 to meet the needs of inmates and the correctional system;

35 (c) the current number of inmates within the prison system who are
36 living in double-bunked and double-celled conditions, with an explana-
37 tion as to the number of inmates double-bunked and double-celled, if
38 any, within minimum security facilities, medium security facilities, and
39 maximum security facilities. The commissioner shall provide an explana-
40 tion as to the number of inmates, if any, who are living in double-
41 bunked or double-celled conditions as a result of a variance received
42 from the state commission of correction established pursuant to article
43 three of this chapter. For the purposes of this paragraph, an inmate
44 shall be deemed to be living in a double-bunked condition when his or
45 her confinement bed is situated immediately above another confinement
46 bed or immediately below another confinement bed in a housing unit
47 defined by the state commission of correction as a multiple occupancy
48 housing unit and, an inmate shall be deemed to be living in a double-
49 celled condition when his or her confinement bed is situated immediately
50 above another confinement bed or immediately below another confinement
51 bed in a housing unit defined by the state commission of correction as
52 either an individual occupancy housing unit or a double occupancy hous-
53 ing unit originally designed for individual occupancy.

54 § 2. Section 79-a of the correction law, as amended by section 1 of
55 part H of chapter 56 of the laws of 2009, is amended to read as follows:

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1 § 79-a. Closure of correctional facilities; notice. Before the closure
2 of any correctional facility, [7] for reasons other than those set forth
3 in paragraph (a) of subdivision eight of section forty-five of this
4 chapter, the commissioner shall take the following actions:

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

9 2. consult with the department of economic development and any other
10 appropriate state agencies to develop strategies which attempt to mini-
11 mize the impact of such closures on the local and regional economies;
12 [and]

13 3. provide notice by certified mail to (i) all local governments of
14 any political subdivision in which the correctional facility is located,
15 (ii) all employee labor organizations operating within, or representing
16 employees of, the correctional facility, [and] (iii) managerial and
17 confidential employees employed within the correctional facility and
18 (iv) the temporary president of the senate, the speaker of the assembly,
19 the minority leader of the senate, the minority leader of the assembly,
20 and the chairs of the senate finance, assembly ways and means, senate
21 crime victims, crime and correction and assembly correction committees
22 at least twelve months prior to any such closure[-]; and

23 4. include, with the notice required by subdivision three of this
24 section, a report regarding the impact of the closure on inmates and
25 staff in the state prison system. Such report shall include, but not
26 limited to, the following:

27 (i) an explanation as to the impact of such closure on the state pris-
28 on system as a whole, including the impact, if any, on inmate security
29 level classification, the change, if any, that will result in the ratio
30 of inmates to correctional staff, both within individual correctional
31 facilities and within the state prison system as a whole, the change
32 that will result in the bed capacity within the state prison system as a
33 whole and within the minimum security correctional facilities, medium
34 security correctional facilities and maximum security correctional
35 facilities, respectively;

36 (ii) an explanation as to the impact of such closure on employees of
37 the department who will be affected, including information as to the
38 number of employees who will have new work locations and the efforts, if
39 any, undertaken by the department to minimize the relocation of any
40 employees; and

41 (iii) an explanation as to the number and types of programs and the
42 availability of programs, if any, that will be impacted by such closure,
43 including programs designed to promote the successful and productive
44 reentry and reintegration into society of inmates upon their release
45 from the custody of the department.

46 § 3. This act shall take effect immediately.

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

BILL NUMBER: A11330A

SPONSOR: Rules (Aubry)

TITLE OF BILL: An act to amend the correction law, in relation to requiring certain reports to the legislature regarding correctional facilities

PURPOSE OF THE BILL: To require the department of correctional services to report to the legislature on the staffing and capacity of the state prison system.

SUMMARY OF PROVISIONS: Section one of the bill requires that on February 1, 2011, and every year thereafter, the commissioner of the department of correctional services shall provide the legislature with a detailed report on security staffing levels and bed capacity, including the number of inmates living in doubled-bunked and double-celled conditions, within the state prison system.

Section two of the bill amends section 79a of the correction law to require the department of correctional services to submit a report to the legislature on the impact of a proposed prison closure along with the closure notice already required by existing law. Such report will include information regarding the impact on inmate security level classification, security staffing to inmate ratio; bed capacity, programs, and impact of such closure on employees of the department of correctional services.

JUSTIFICATION: Existing law requires the department of correctional services (DOCS) to report security staffing information to the legislature each year. This bill expands the existing report by requiring additional information about security staffing ratios, bed capacity and the double-bunking and double-ceiling of inmates be included in such report. The bill also requires that such report be provided to the legislature by February 1st of each year.

Additionally, this bill modifies the prison closure notice requirements of section 79-a of the correction law by requiring that a report, with specific information regarding the impact of any proposed closure, accompany the closure notice. Each year a prison closure has been proposed by the Governor, DOCS has provided the legislature with a report detailing the reason for the proposed closure and the anticipated impact. This bill will codify this practice and require DOCS to formally report on how a prison closure will impact staff, security, inmates, available bed capacity, and programs. This will ensure that the legislature continues to be provided with the information needed to make informed decisions regarding proposed prison closures.

PRIOR LEGISLATIVE HISTORY: None.

FISCAL IMPLICATIONS: None.

EFFECTIVE DATE: This act shall take effect immediately.

A11330-A Rules (Aubry) Same as S 8022 HASSELL-THOMPSON

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|----------|----------|---------------|----------|--------|
| 06/30/10 | A11330-A | Senate Vote | Aye: 61 | Nay: 0 |
| 06/22/10 | A11330-A | Assembly Vote | Yes: 142 | No : 0 |

[Go to Top of Page](#)**Floor Votes:**

06/30/10 A11330-A Senate Vote Aye: 61 Nay: 0

| | | | |
|----------------------------|----------------------|-----------------------------|------------------------|
| Aye Adams | Aye Addabbo | Aye Alesi | Aye Aubertine |
| Aye Bonacic | Aye Breslin | Aye DeFrancisco | Aye Diaz |
| Aye Dilan | Aye Duane | Aye Espada | Aye Farley |
| Aye Flanagan | Aye Foley | Aye Fuschillo | Aye Golden |
| Aye Griffo | Aye Hannon | Aye Hassell-Thompson | Aye Huntley |
| Aye Johnson C | Aye Johnson O | Aye Klein | Aye Krueger |
| Aye Kruger | Aye Lanza | Aye Larkin | Aye LaValle |
| Aye Leibell | Aye Libous | Aye Little | Aye Marcellino |
| Aye Maziarz | Aye McDonald | Aye Montgomery | Exc Morahan |
| Aye Nozzolio | Aye Onorato | Aye Oppenheimer | Aye Padavan |
| Aye Parker | Aye Peralta | Aye Perkins | Aye Ranzenhofer |
| Aye Robach | Aye Saland | Aye Sampson | Aye Savino |
| Aye Schneiderman | Aye Serrano | Aye Seward | Aye Skelos |
| Aye Smith | Aye Squadron | Aye Stachowski | Aye Stavisky |
| Aye Stewart-Cousins | Aye Thompson | Aye Valesky | Aye Volker |
| Aye Winner | Aye Young | | |

[Go to Top of Page](#)**Floor Votes:**

06/22/10 A11330-A Assembly Vote Yes: 142 No : 0

| | | | |
|-----------------------|-----------------------|-------------------------|------------------------|
| Yes Abbate | Yes Alessi | Yes Alfano | Yes Amedore |
| Yes Arroyo | Yes Aubry | Yes Bacalles | Yes Ball |
| Yes Barclay | Yes Barra | Yes Barron | Yes Benedetto |
| Yes Benjamin | Yes Bing | Yes Boyland | Yes Boyle |
| Yes Brennan | Yes Brodsky | Yes Brook-Krasny | Yes Burling |
| Yes Butler | Yes Cahill | Yes Calhoun | Yes Camara |
| Yes Canestrari | Yes Carrozza | Yes Castelli | ER Castro |
| ER Christensen | Yes Clark | Yes Colton | Yes Conte |
| ER Cook | Yes Corwin | ER Crespo | Yes Crouch |
| Yes Cusick | Yes Cymbrowitz | Yes DeMonte | Yes DenDekker |
| Yes Destito | Yes Dinowitz | Yes Duprey | Yes Englebright |
| Yes Errigo | Yes Espaillat | Yes Farrell | Yes Fields |

| | | | |
|--------------------|-----------------|----------------|------------------|
| Yes Finch | Yes Fitzpatrick | Yes Gabryszak | Yes Galef |
| Yes Gantt | Yes Gianaris | Yes Gibson | Yes Giglio |
| Yes Glick | Yes Gordon | Yes Gottfried | Yes Gunther A |
| Yes Hawley | Yes Hayes | Yes Heastie | ER Hevesi |
| Yes Hikind | Yes Hooper | Yes Hoyt | Yes Hyer-Spencer |
| Yes Jacobs | Yes Jaffee | Yes Jeffries | Yes John |
| Yes Jordan | Yes Kavanagh | Yes Kellner | Yes Kolb |
| Yes Koon | Yes Lancman | Yes Latimer | Yes Lavine |
| Yes Lentol | Yes Lifton | Yes Lopez P | Yes Lopez V |
| Yes Lupardo | Yes Magee | Yes Magnarelli | Yes Maisel |
| Yes Markey | Yes Mayersohn | Yes McDonough | Yes McEneny |
| Yes McKevitt | Yes Meng | ER Miller J | Yes Miller M |
| Yes Millman | Yes Molinaro | Yes Montesano | Yes Morelle |
| Yes Murray | Yes Nolan | Yes Oaks | Yes O'Donnell |
| Yes O'Mara | Yes Ortiz | Yes Parment | Yes Paulin |
| Yes Peoples-Stokes | Yes Perry | Yes Pheffer | ER Powell |
| Yes Pretlow | Yes Quinn | Yes Rabbitt | Yes Raia |
| Yes Ramos | Yes Reilich | Yes Reilly | Yes Rivera J |
| Yes Rivera N | Yes Rivera P | Yes Robinson | Yes Rosenthal |
| Yes Russell | Yes Saladino | Yes Sayward | Yes Scarborough |
| Yes Schimel | Yes Schimminger | Yes Schroeder | Yes Scozzafava |
| Yes Skartados | Yes Spano | Yes Stirpe | Yes Sweeney |
| Yes Tedisco | Yes Thiele | Yes Titone | Yes Titus |
| Yes Tobacco | Yes Towns | Yes Townsend | Yes Weinstein |
| Yes Weisenberg | Yes Weprin | Yes Wright | Yes Zebrowski K |
| Yes Mr. Speaker | | | |

V6767

DIVISION OF THE BUDGET BILL MEMORANDUM

Session Year 2010

SENATE:
No.

ASSEMBLY:
No. 11330-A

Primary Sponsor: Assemblyman Aubry

Law: Correction

Sections: 29 & 79-a

Division of the Budget recommendation on the above bill

APPROVE:

VETO: X

NO OBJECTION:

1. Subject and Purpose:

This bill would expand the types of information the Department of Correctional Services (DOCS) must report annually to the Legislature on the staffing and capacity of the state prison system. The bill would also require DOCS to include a report on the impact of a proposed closure on prison staffing and programming when issuing a formal announcement of the closure of a facility.

2. Summary of Provisions:

Section one of the bill would expand the types of information DOCS is required to provide to the Legislature on the staffing and capacity of the state prison system, including: inmate to staff ratios at each facility; the total number of facilities and their security level; the total number of inmates at each facility; the total amount of beds as well as the total amount of empty beds at each facility, the type of beds (i.e. general, infirmary, work release etc.) that are either occupied or empty at each facility; and the total number of inmates living in either double bunked or doubled celled conditions. The first report containing this new information would be due to the legislative majority leaders, minority leaders and committee chairs on February 1, 2011.

Section two of the bill would require DOCS to submit a report to the Legislature on the impact of a proposed prison closure along with the current statutorily required closure notification. The report would include but would not be limited to the following: how the proposed closure would impact the correctional system overall; how the proposed closure(s) would impact the bed capacity in the system and staffing ratios; the impact on employees that would have new work locations as a result of the closures, as well as efforts by the Department to minimize the impact; and the number and types of programs (including reintegration programs) that would be impacted by the proposed closure.

3. Legislative History:

None.

4. Arguments in Support:

It could be argued that this bill would provide the Legislature, unions, and the public with more detailed information regarding the staffing and capacity of State correctional facilities. However, the bill is so prescriptive that it could limit DOCS' ability to provide meaningful information and comparisons, and raises the potential for misinterpretation and misuse of the information.

5. Arguments in Opposition:

- a. **This bill is unworkable.** The types of detailed data requested in this legislation – presented for a single point in time – would be highly subject to misinterpretation. Snapshot views of bed counts do not present the wholistic view of operations that is necessary to truly manage the system safely. Yet to report more would both place a new administrative burden on DOCS, and allow the Legislature an inappropriate incursion into the Executive's management domain. Further, early detailed information on the transfer of employees – a highly dynamic process – could also be misleading, and cause unnecessary concern for staff.
- b. **This bill will provide another significant impediment to advancing a proposed closure.** In each of the last three administrations, Executive Budget proposals have included proposals for closure – with only limited success. The requirement to publish detailed data well in advance of final decisions by employees and prison managers appears to be an attempt by the Legislature and public employee unions to lock the Executive into making statements and assumptions, which – given the dynamic nature of prison operations – would likely later prove to be incorrect.
- c. **This bill is unnecessary,** as DOCS already voluntarily provides information on the impact of closures on the system – at a level of detail that is appropriate in the current closure notification timeframes.

6. Other State Agencies Interested:

The Department of Correctional Services opposes this bill.

7. Other Interested Groups:

The New York State Correctional Officers & Police Benevolent Association (NYSCOPBA), Public Employees Federation (PEF), Civil Service Employee Association (CSEA), Council 82, and the Organization of Management Confidential Employees (OMCE) would be interested in this bill.

8. Budget Implications:

The data necessary to produce the reports required by the bill would necessitate the hiring of additional staff at DOCS at an estimated annual cost of \$225,000 as well as the possible procurement of computer software to compile the data at an estimated investment of \$1 million or more. During a period of severe fiscal crisis, the Division questions whether this would be a wise use of scarce resources.

9. Recommendation:

This bill would expand the types of information the Department of Correctional Services (DOCS) is required to provide to the Legislature on the staffing and capacity of the state prison system and would also require DOCS to submit a report to the Legislature on the impact of a proposed prison closure along with the current statutorily required closure notification.

Given the effort and resources required to comply with the requirements of the bill, and the potentially misleading nature of the information which would result, the Division recommends veto.

V6767



New York State Correctional Officers & Police Benevolent Association, Inc.

102 Hackett Blvd., Albany, NY 12209
(518) 427-1551 www.nyscopba.org nyscopba@nyscopba.org



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Don Rowe

Executive Vice President
Chris Bickett

Recording Secretary
Diane Davis

Treasurer
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Vice President, Northern Region
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Vice President, Mid-Hudson Region
Kevin Walker

Vice President, Law Enforcement
Thomas Sawyer

Vice President, Central Region
Tom Haas

Vice President, Western Region
Al Mothershed

Vice President, Southern Region
Willie Perez

August 5, 2010

Hon. David A. Paterson
Governor of the State of New York
Executive Chamber
New York State Capital
Albany, NY 12224

Re: S.8022/A.11330-A

Dear Governor Paterson:

On behalf of the New York State Correctional Officers and Police Benevolent Association, Inc. ("NYSCOPBA"), which represents the more than 20,000 members of the Security Services collective bargaining unit, I respectfully request that you sign into law the above referenced legislation which, as explained below, would require the Department of Correctional Services ("DOCS") to report to the Legislature on the staffing and capacity of the State prison system on an annual basis.

Specifically, the bill would require that on February 1, 2011, and every year thereafter, that the Commissioner of DOCS provide the Legislature with a detailed report on security staffing levels and bed capacity, including the number of inmates living in double-bunked conditions within the State prison system. The bill would also require the Commissioner to submit a report to the Legislature on the impact of a proposed prison closure – such report to be submitted along with the closure notice currently required by § 79-a of the *Correction Law*. Such report would include information regarding the impact on inmate security level classification, security staffing to inmate ratio, bed capacity, programs, and the impact of the closure on employees of DOCS.

Each year for the past several years, the Commissioner of DOCS has proposed the closure of correctional facilities in an effort to cut costs within the Department. The justification for these proposed closures, according to the Commissioner, has been the declining number of individuals incarcerated within the State's prison system. NYSCOPBA has aggressively opposed each and every one of these proposed closures and has argued for a "right-sizing" of the prison system as a condition precedent to any correctional facility closure. The Union has explained that there are still thousands of inmates living in double-bunked

conditions even though the inmate population has declined in recent years. Moreover, the officer to inmate ratio within the State's prison system continues to remain at an unsafe level for both the officers working within the facilities and the inmates with whom the officers are charged with supervising. With each prison closure, inmates are transported to new facilities requiring the State's correctional workforce to maintain the care, custody and control of even more inmates than they were prior to a closure.

This legislation is critical to ensuring that the executive and legislative branches of State government are fully aware of all relevant conditions within the State's prison system prior to authorizing a prison closure within the context of the State budget process. The proposal will ensure that New York's governing individuals have a full and firm understanding about the number of incarcerated individuals living in double-bunked quarters - quarters which were originally designed for a single incarcerated individual. Moreover, the provisions within this bill will certainly provide the executive and legislative branches with a more thorough understanding of the safety concerns raised by NYSCOPBA on behalf of both the officers working within the State's prison system and the individuals incarcerated within the system as well.

For the reasons stated herein, on behalf of NYSCOPBA, I strongly urge you to sign into law this important piece of legislation.

Sincerely,



Donn Rowe.

NYSCOPBA President



BRIAN FISCHER
COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
THE HARRIMAN STATE CAMPUS - BUILDING 2
1220 WASHINGTON AVENUE
ALBANY, N.Y. 12226-2050

July 20, 2010

Kiernan

Honorable Peter Kiernan
Counsel to the Governor
Executive Chamber
State Capitol
Albany, NY 12224

RE: A11330-A/S8022-A

Dear Mr. Kiernan:

The above-captioned item of legislation would amend sections 29 and 79-a of the Correction Law in relation to placing additional, very detailed, onerous, and costly reporting requirements upon the Department of Correctional Services. The first section that is amended, subdivision four of section 29, is an existing provision of law that requires the Department to submit an annual report to the Legislature pertaining to security staffing at facilities, plot plans, closed posts and overtime. The other provision of law being amended, Section 79-a, sets forth all of the necessary steps to be taken by the Department in advance of the proposed closure of a correctional facility.

The Department of Correctional Services strenuously objects to this legislation for a number of security, policy, logistical, and fiscal reasons, and urges that the Governor disapprove it. From an overview perspective, there are two major flaws with the bill as written -- one dealing with understanding the dynamics of the prison system, and the other pertaining to the reporting of misleading information regarding staff that unquestionably will lead to confusion and contract conflict.

On the operational side, a single snapshot view of the prison system too often leads to inaccurate and potentially devastating results. Prison operations and planning must depend upon understanding trends, not single time data. Effective management and oversight of the system require that questions such as the following, which rely on trend data, be answered regularly.

- Is the inmate population going up or down, and if so, what is the projected rate of increase or decrease over time; or is the inmate population staying flat.
- Is staff attrition going up or down and are replacements entering the system keeping up with replacements.
- Does the system need more cells or more dormitory beds.

Honorable Peter Kiernan
July 20, 2010
Page 3

on the total number of inmates who are living in double-bunked and double-celled conditions, broken down by correctional facility, and the number of inmates living in double-bunked or double-celled conditions as a result of a variance issued by the State Commission of Correction. This section then defines a double-bunked bed as any arrangement where an inmate's confinement bed is situated immediately above or immediately below another confinement bed.

The way this amendment delineates all of the reporting requirements can lead to erroneous conclusions to an outsider about the housing conditions for inmates. For example, the fact that a bunk bed arrangement may be in existence in various housing units, may be completely irrelevant to any concern as to whether there is crowding or not.

It is the State Commission of Correction (SCOC) which, pursuant to its constitutional and statutory powers and duties, has established minimum standards for the regulation and management of state correctional facilities. The SCOC's regulations for all state correctional facilities are set forth in Part 7600 of Title 9 of the New York Code, Rules and Regulations. For example, in section 7621.8, the SCOC has delineated that: no more than 60 inmates can be housed in a multiple occupancy unit; there must be one toilet for every 12 inmates, one shower for every 15 inmates and one sink for every 12 inmates; and there must be at least 50 square feet of floor space per inmate in the sleeping area. If a housing unit is set up such that any one or more of these conditions is not met, then the Department must apply for and receive a variance from the SCOC in order to house the additional inmates under such circumstances.

In a number of the Department's prototype medium security correctional facilities, which were built during the period from the mid-eighties to the early nineties, there are sixty inmates in each dorm. The conditions under which these inmates are housed are in full conformity with all applicable SCOC minimum standards and thus, no variances are required. Yet, to maximize the ability of security staff to view the entire unit from the security station, the last row of 10 beds is double bunked. This is far preferable to a lay-out where all sixty beds would instead be spread out as sixty single beds. Yet, all of these beds in the last row would now have to be reported as double-bunking and thus create the misimpression that there was crowding in the Department's prototype medium security facilities.

It is believed that this kind of report could then be misused by any advocates who wish to oppose any correctional facility closures for various political reasons. When the Department in the past has proposed the closure of one or more correctional facilities, it has been for two reasons. First, there has been an unprecedented decline in the inmate population and second, there has been an unprecedented fiscal crisis. Yet, certain entities which have opposed closures have resorted to desperation tactics, including the posting on a web page of pictures of inmates living in very crowded conditions with the notation that this was New York. The fact that the depicted inmates were wearing orange jump suits confirmed that these were pictures of inmates who were confined in another jurisdiction's prison system.



STATE OF NEW YORK

DAVID A. PATERSON
GOVERNOR

PETER J. KIERNAN
COUNSEL TO THE GOVERNOR

July 8, 2010

Honorable Jeffrion Aubry
New York State Assembly
Room 526
Legislative Office Building
Albany, New York 12248

Honorable Ruth Hassell-Thompson
New York State Senate
Room 612
Legislative Office Building
Albany, New York 12247

Dear Assemblyman Aubry and Senator Hassell-Thompson:

As you know, legislation that you have sponsored (A.11330-A / S.8022) has now passed both houses of the Legislature, and will soon be sent to the Governor for action.

In order to assist the Governor in reviewing this legislation and deciding whether it should be signed into law, we would greatly appreciate receiving any relevant documents or information that you have on this bill. In particular, we would very much like to receive:

- copies of the sponsor's memorandum in support of this bill;
- copies of any comment letters in support of or in opposition to this bill that you received from outside organizations, individuals or other third parties;
- if hearings were held on the bill, copies of the transcripts of those hearings; and
- any other documents or information that you believe should be considered by the Governor.

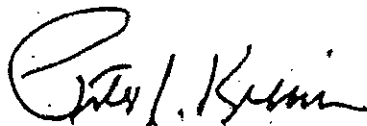
The State Constitution gives the Governor only 10 days to act on bills after they have been forwarded by the Legislature, and we therefore would appreciate receiving the above information at your earliest convenience. Please send any materials you have to:

Kristin Ross
Legislative Secretary's Office
Executive Chamber
State Capitol - Room 225
Albany, New York 12224

Any information that you provide will be included in the bill jacket that is maintained by the State Archives and constitutes the legislative history of bills that have been signed into law.

Thank you for your consideration and assistance, and please feel free to contact this office if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Peter J. Kiernan". The signature is written in a cursive style with a large initial "P".

Peter J. Kiernan
Counsel to the Governor

cc: K. Ross

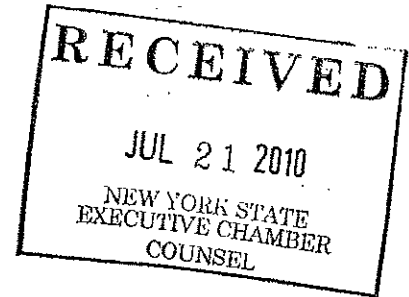


BRIAN FISCHER
COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
THE HARRIMAN STATE CAMPUS - BUILDING 2
1220 WASHINGTON AVENUE
ALBANY, N.Y. 12226-2050

7/8
A11330

July 20, 2010



Kiernan

Honorable Peter Kiernan
Counsel to the Governor
Executive Chamber
State Capitol
Albany, NY 12224

RE: A11330-A/S8022-A

Dear Mr. Kiernan:

The above-captioned item of legislation would amend sections 29 and 79-a of the Correction Law in relation to placing additional, very detailed, onerous, and costly reporting requirements upon the Department of Correctional Services. The first section that is amended, subdivision four of section 29, is an existing provision of law that requires the Department to submit an annual report to the Legislature pertaining to security staffing at facilities, plot plans, closed posts and overtime. The other provision of law being amended, Section 79-a, sets forth all of the necessary steps to be taken by the Department in advance of the proposed closure of a correctional facility.

The Department of Correctional Services strenuously objects to this legislation for a number of security, policy, logistical, and fiscal reasons, and urges that the Governor disapprove it. From an overview perspective, there are two major flaws with the bill as written -- one dealing with understanding the dynamics of the prison system, and the other pertaining to the reporting of misleading information regarding staff that unquestionably will lead to confusion and contract conflict.

On the operational side, a single snapshot view of the prison system too often leads to inaccurate and potentially devastating results. Prison operations and planning must depend upon understanding trends, not single time data. Effective management and oversight of the system require that questions such as the following, which rely on trend data, be answered regularly.

- Is the inmate population going up or down, and if so, what is the projected rate of increase or decrease over time; or is the inmate population staying flat.
- Is staff attrition going up or down and are replacements entering the system keeping up with replacements.
- Does the system need more cells or more dormitory beds.

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- More importantly, is the staff-to-inmate ratio moving up or down and if so, at which facility or facilities are there problems.

Based upon the above, it should be self-evident that focusing on one-day snap shot information is the worst approach for evaluating a prison system, and as such, this bill will only raise unnecessary and ill-developed questions since the prison picture will be obscured. The Department already provides periodic trend information to various members of the Legislature and certainly provides detailed trend data when the proposed Executive Budget is submitted.

The second general problem pertaining to misleading information about staff, arises from the change to Correction Law Section 79-a, which will require "information as to the number of employees who will have new work locations and the efforts...to minimize relocation of any employees." This information must be included in a report that is issued six months prior to the actual closure of the facility.

To even suggest that the Department would know more than six months prior to an actual facility closure, which staff might be able to transfer, and to which facilities they might transfer to, borders on the unethical and ignores the very contract rules which the union so rigorously protects and relies upon. Where a staff member can transfer to is subject to seniority rules, vacancies, and even Civil Service rules. To mandate that the agency make suggested outcomes that affect the personal lives of staff is an unacceptable approach to management. It too easily could give staff a false sense of security about their jobs, and thereafter when reality hits, it will be the agency which will be criticized, and not the Legislature, nor the union which clearly set this bill in motion. Therefore, one must question whether there is a hidden agenda at play here, which is to prevent any correctional facility from ever closing, regardless of the size of the decline in the inmate population or the depth of any fiscal crisis.

Turning now to the more specific problems presented by the bill, with respect to the changes being made to section 29, there is a major concern with the new requirement that the annual report list the actual ratio of all security staff to inmates for each correctional facility. This certainly is sensitive information that should not be released in an annual report to the Legislature, since, once such report is issued, it would have to be made available to any entity or person, including any inmate, who chooses to submit a request for a copy of such a report under the Freedom of Information Law.

The next concern has to do with the entirely new responsibility created in this section to provide extraordinarily detailed information about all of the Department's correctional facilities, with a breakdown of all its beds, including the particular purposes the beds are used for such as general confinement, infirmary, discipline and special program, the number of empty beds, and an explanation of the necessity to maintain such specialized and restricted beds to meet the needs of the inmate population. A new responsibility is also created to report

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on the total number of inmates who are living in double-bunked and double-celled conditions, broken down by correctional facility, and the number of inmates living in double-bunked or double-celled conditions as a result of a variance issued by the State Commission of Correction. This section then defines a double-bunked bed as any arrangement where an inmate's confinement bed is situated immediately above or immediately below another confinement bed.

The way this amendment delineates all of the reporting requirements can lead to erroneous conclusions to an outsider about the housing conditions for inmates. For example, the fact that a bunk bed arrangement may be in existence in various housing units, may be completely irrelevant to any concern as to whether there is crowding or not.

It is the State Commission of Correction (SCOC) which, pursuant to its constitutional and statutory powers and duties, has established minimum standards for the regulation and management of state correctional facilities. The SCOC's regulations for all state correctional facilities are set forth in Part 7600 of Title 9 of the New York Code, Rules and Regulations. For example, in section 7621.8, the SCOC has delineated that: no more than 60 inmates can be housed in a multiple occupancy unit; there must be one toilet for every 12 inmates, one shower for every 15 inmates and one sink for every 12 inmates; and there must be at least 50 square feet of floor space per inmate in the sleeping area. If a housing unit is set up such that any one or more of these conditions is not met, then the Department must apply for and receive a variance from the SCOC in order to house the additional inmates under such circumstances.

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Among the logistical and fiscal reasons why the Department urges that this bill be vetoed are that this agency, like every other agency of state government, is under enormous pressure to reduce expenditures. The Department is presently struggling on a daily basis to fulfill its core mission at the same time that vacant positions throughout the system continue to grow, since an approval from the Division of the Budget is a prerequisite for any backfill. This will only be greatly exacerbated as the Department's work force participates in the two sweeping retirement plans that were recently approved by the Legislature and the Executive. In an era when the state is undergoing the worst fiscal crisis since the Great Depression, it is unconscionable for an item of legislation to be signed into law, such as this, which will impose sweeping new, labor-intensive and time-consuming mandates on a work force that is already stretched beyond the limits. This is particularly so when the purported justification and need for this bill are either flimsy or non-existent.

The Department has a long history of routinely sharing with the Legislature its reports on its correctional facilities, their capacities, bed usage, and demand and projected demand for bed space. Any time there has been a request for any additional information or for clarification on any matter in this general area, the Department has responded promptly and in a forthright manner. The Department is completely unaware of any situation that ever arose where a member of the Legislature or an aide submitted an inquiry that was not addressed in a thorough and timely manner. Accordingly, the Department does not understand why such a sweeping bill was enacted by the Legislature.

For all of the above reasons, the Department respectfully urges that this bill be disapproved. If you have any questions, please feel free to contact me.

Sincerely,



Brian Fischer
Commissioner

cc: Anthony J. Annucci, Executive Deputy Commissioner
Maureen Boll, Deputy Commissioner and Counsel
Jennifer Moore, Assistant Counsel, Executive Chamber
Robin Forshaw, Assistant Counsel, Executive Chamber