

DRAFT LBDC

A BUDGET BILL submitted by the Governor  
in accordance with Article VII of the Constitution

AN ACT to amend the correction law and the civil service law, in relation to employee safety and employee discipline for misconduct; and to repeal certain provisions of the correction law relating to the appointment of correction and parole officers (Part \_\_);

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

## 1 PART \_\_\_\_\_

2       Section 1. Subdivision 4 of section 7 of the correction law is  
3 REPEALED.

4       § 2. Subdivisions 1 and 6 of section 8 of the correction law, as  
5 amended by section 6 of subpart A of part C of chapter 62 of the laws of  
6 2011, are amended to read as follows:

1. Any applicant for employment with the department as a correction officer [at a facility of the department], institution safety officer, parole officer, or warrant and transfer officer shall be tested in accordance with the requirements of this section.

6. Notwithstanding any other provision of law, the results of the tests administered pursuant to this section shall be used solely for the qualification of a candidate for correction officer, institution safety officer, parole officer, or warrant and transfer officer and the validation of the psychological instruments utilized. For all other purposes, the results of the examination shall be confidential and the records sealed by the department of corrections and community super-

1 vision, and not be available to any other agency or person except by  
2 authorization of the applicant or, upon written notice by order of a  
3 court of this state or the United States.

4 § 3. Subdivisions 2 and 3 of section 10 of the correction law are  
5 REPEALED and subdivision 4 is renumbered subdivision 2.

6 § 4. Section 22-a of the correction law, as added by chapter 134 of  
7 the laws of 1984, is amended to read as follows:

8 § 22-a. Qualification for employment as a correction officer, institu-  
9 tion safety officer, parole officer, or warrant and transfer officer.

10 1. The commissioner shall not appoint any person as a correction offi-  
11 cer, institution safety officer, parole officer or warrant and transfer  
12 officer, unless such person has attained his or her twenty-first birth-  
13 day.

14 2. The commissioner shall not appoint any person as a correction offi-  
15 cer or warrant and transfer officer, unless such person is a high school  
16 graduate or a holder of a high school equivalency diploma issued by an  
17 education department of any of the states of the United States or a  
18 holder of a comparable diploma issued by any commonwealth, territory or  
19 possession of the United States or by the canal zone or a holder of a  
20 report from the United States armed forces certifying his or her  
21 successful completion of the tests of general educational development,  
22 high school level. In addition, the diploma issued to the high school  
23 graduate must be from an accredited public or private school recognized  
24 by the education department. Diplomas issued through a home study course  
25 and not by an appropriate educational authority will not be accepted.

26 3. The commissioner shall not appoint any person as a parole officer,  
27 unless such person possesses a baccalaureate degree conferred by a post-  
28 secondary institution accredited by an accrediting agency recognized by

1 the Unites States department of education. Parole officer selection  
2 shall be based on definite qualifications as to character, ability and  
3 training with an emphasis on capacity and ability to provide a balanced  
4 approach to influencing human behavior and to use judgement in the  
5 enforcement of the rules and regulations of community supervision.  
6 Parole officers shall be persons likely to exercise a strong and helpful  
7 influence upon persons placed under their supervision while retaining  
8 the goal of protecting society.

9 4. There are no specific education requirements for the position of  
10 institution safety officer.

11 5. No person, on or after the effective date of this section, may be  
12 appointed to the position of a correction officer [in any], institution  
13 safety officer, parole officer, or warrant and transfer officer in the  
14 department who has been convicted of a felony or of any offense in any  
15 other jurisdiction which if committed in this state would constitute a  
16 felony. The commissioner may in his discretion, bar the appointment of a  
17 person, on or after the effective date of this section, to the position  
18 of correction officer [in any], institution safety officer, parole offi-  
19 cer, or warrant and transfer officer, in the department, who has been  
20 convicted of a misdemeanor or of any offense in any other jurisdiction  
21 which if committed in this state would constitute a misdemeanor where he  
22 has determined that the employment of such person is not in the best  
23 interest of the department, who is not fit physically, or who, after a  
24 thorough investigation, is determined to not be of good moral character.

25 Notwithstanding the foregoing provisions of this section, no person  
26 shall be disqualified pursuant to this section unless he shall have  
27 first been furnished a written statement of the reasons for such  
28 disqualification and afforded an opportunity by the commissioner, or his

1 designee, to make an explanation and to submit facts in opposition ther-  
2 eto.

3 6. Notwithstanding any other provision of law, the commissioner, in  
4 his or her discretion may terminate the employment of any employee who  
5 is convicted of a crime whenever the commissioner determines that the  
6 continued employment of such person would not be in the best interest of  
7 the department. Notwithstanding the foregoing, no employee shall be  
8 terminated pursuant to this section unless he or she shall first have  
9 been furnished with a written statement of the reasons for such determi-  
10 nation and afforded an opportunity by the commissioner, or his or her  
11 designee, to make an explanation and to submit facts in opposition ther-  
12 eto.

13 § 5. The correction law is amended by adding a new section 12 to read  
14 as follows:

15 § 12. Commissioner's authority to discipline certain serious miscon-  
16 duct. 1. Acts of misconduct. Notwithstanding any other provision of law,  
17 when an employee is alleged to have committed an act of serious miscon-  
18 duct consisting of any of the following: an act of excessive use of  
19 force; an act of false reporting regarding one or more acts of excessive  
20 use of force; an intentional failure to report an excessive use of force  
21 act; the use or possession of a controlled substance or marihuana as  
22 defined in articles two hundred twenty and two hundred twenty-one of the  
23 penal law or synthetic cannabinoids as defined in section eight hundred  
24 twelve of title twenty-one of the United States code; the introduction  
25 of a controlled substance, marihuana or other significantly incapacitat-  
26 ing substance to a department facility; or an inappropriate sexual  
27 relationship or contact with an inmate or parolee; then the disciplinary  
28 process that may be applied to such employee shall not be governed by

1 any collective bargaining agreement or by section seventy-five of the  
2 civil service law, but shall be governed by the provisions of this  
3 section.

4 2. Disciplinary action. A person described in paragraph (a), (b) or  
5 (c) of this subdivision shall not be removed or otherwise subjected to  
6 any disciplinary penalty provided in this section except for serious  
7 misconduct, as set forth in subdivision one of this section, after a  
8 hearing upon stated charges pursuant to this section.

9 (a) a person holding a position by permanent appointment in the  
10 competitive class of the classified civil service; or

11 (b) a person holding a position by permanent appointment or employment  
12 in the classified service of the state, who was honorably discharged or  
13 released under honorable circumstances from the armed forces of the  
14 United States having served therein as such member in time of war as  
15 defined in section eighty-five of the civil service law, or who is an  
16 exempt volunteer firefighter as defined in the general municipal law,  
17 except when a person described in this paragraph holds the position of  
18 private secretary, cashier or deputy of any official or department; or

19 (c) an employee holding a position in the non-competitive class other  
20 than a position designated in the rules of the state civil service  
21 commission as confidential or requiring the performance of functions  
22 influencing policy, who since his or her last entry into service has  
23 completed at least five years of continuous service in the non-competi-  
24 tive class in a position or positions not so designated in the rules as  
25 confidential or requiring the performance of functions influencing poli-  
26 cy.

27 3. Procedure. An employee as described in subdivision two of this  
28 section who at the time of questioning appears to be a potential subject

1 of disciplinary action for an act of serious misconduct shall have a  
2 right to representation by his or her certified or recognized employee  
3 organization under article fourteen of the civil service law and shall  
4 be notified in advance, in writing, of such right. An employee as  
5 described in subdivision two of this section who is designated manageri-  
6 al or confidential under article fourteen of the civil service law,  
7 shall have, at the time of questioning, where it appears that such  
8 employee is a potential subject of disciplinary action for an act of  
9 serious misconduct, a right to representation and shall be notified in  
10 advance, in writing, of such right. If representation is requested, a  
11 reasonable period of time shall be afforded to obtain such represen-  
12 tation. If the employee is unable to obtain representation within a  
13 reasonable period of time, then the department may proceed with ques-  
14 tioning the employee. A hearing officer appointed under this section  
15 shall determine if a reasonable period of time was or was not afforded.  
16 In the event the hearing officer finds that a reasonable period of time  
17 was not afforded then any and all statements obtained from said ques-  
18 tioning, as well as any evidence or information obtained as a result of  
19 said questioning shall be excluded. A person against whom removal or  
20 other disciplinary action is proposed shall be provided written notice  
21 and shall be furnished a copy of the charges preferred against him or  
22 her and shall be allowed at least eight days for answering the same in  
23 writing. The hearing upon such charges shall be held by a hearing offi-  
24 cer, selected by the commissioner or his or her designee. The hearing  
25 officer shall be vested with all the powers of the commissioner and  
26 shall make a record of such hearing, which shall, along with his or her  
27 recommendation, be referred to the commissioner for review and final  
28 determination. The person holding such hearing shall, upon the request

1 of the employee against whom charges are preferred, permit him or her  
2 to be represented by counsel, or by a representative of a recognized or  
3 certified employee organization, and shall allow him or her to summon  
4 witnesses on his or her behalf. The burden of proving serious misconduct  
5 shall be upon the department. Compliance with technical rules of  
6 evidence shall not be required.

7 4. Suspension pending determination of charges; penalties. Pending the  
8 hearing and determination of charges of serious misconduct, the employee  
9 against whom such charges have been preferred may be suspended without  
10 pay. If the employee is found guilty of the charges, the recommended  
11 penalty or punishment may consist of any combination of the following:

12 (a) a letter of reprimand;

13 (b) removal from work location and transfer;

14 (c) a fine to be deducted from the salary or wages of such employee;

15 (d) probation for a specified period, provided any further violation  
16 can lead to termination;

17 (e) suspension without pay;

18 (f) demotion in grade and title; or

19 (g) dismissal from the service and loss of accumulated leave credits.

20 Provided, however, that the time during the pendency of the hearing,  
21 in which an employee is suspended without pay, may be considered as  
22 part of the penalty.

23 The final determination of the commissioner on the recommendation from  
24 the hearing officer shall be made within ten business days of receipt of  
25 such recommendation. If the employee is acquitted of all charges, he or  
26 she shall be restored to his or her position with full pay for the peri-  
27 od of suspension less the amount of any unemployment insurance benefits  
28 that may have been received.

1 If such employee is found guilty of one or more of the charges, a copy  
2 of the charges, his or her written answer, a transcript of the hearing,  
3 and the final determination of the commissioner shall be filed in the  
4 bureau of labor relations and the employee's personnel file. A copy of  
5 the transcript of the hearing shall, upon request of the affected  
6 employee, be furnished to him or her without charge.

7 5. Appeal. When an employee believes he or she is aggrieved by a  
8 penalty of fine, probation, suspension, demotion or dismissal from  
9 service imposed pursuant to this section, he or she may make an applica-  
10 tion to the appropriate court in accordance with the provision of arti-  
11 cle seventy-eight of the civil practice law and rules.

12 § 6. Paragraph (h) of subdivision 4 of section 50 of the civil service  
13 law, as added by chapter 790 of the laws of 1958, is amended and a new  
14 paragraph (i) is added to read as follows:

15 (h) who has been dismissed from private employments because of habitu-  
16 ally poor performance[.]; or

17 (i) who has been disciplined for an act of serious misconduct as set  
18 forth in subdivision one of section twelve of the correction law.

19 § 7. Subdivision 1 of section 61 of the civil service law, as added by  
20 chapter 790 of the laws of 1958, is amended to read as follows:

21 1. Appointment or promotion from eligible lists. Appointment or  
22 promotion from an eligible list to a position in the competitive class  
23 shall be made by the selection of one of the three persons certified by  
24 the appropriate civil service commission as standing highest on such  
25 eligible list who are willing to accept such appointment or promotion;  
26 provided, however, that the state or a municipal commission may provide,  
27 by rule, that where it is necessary to break ties among eligibles having  
28 the same final examination ratings in order to determine their respec-



1 tive standings on the eligible list, appointment or promotion may be  
2 made by the selection of any eligible whose final examination rating is  
3 equal to or higher than the final examination rating of the third high-  
4 est standing eligible willing to accept such appointment or promotion;  
5 provided, further, that an individual's name shall be suspended from the  
6 eligible list pending the outcome of the review of the applicant's qual-  
7 ifications pursuant to subdivision four of section fifty of this  
8 article. Appointments and promotions shall be made from the eligible  
9 list most nearly appropriate for the position to be filled.

10 § 8. Subdivision 1 of section 112 of the correction law, as amended by  
11 section 19 of subpart A of part C of chapter 62 of the laws of 2011, is  
12 amended to read as follows:

13 1. The commissioner [of corrections and community supervision] shall  
14 have the superintendence, management and control of the correctional  
15 facilities in the department and of the inmates confined therein, and of  
16 all matters relating to the government, discipline, policing, contracts  
17 and fiscal concerns thereof. He or she shall have the power and it shall  
18 be his or her duty to inquire into all matters connected with said  
19 correctional facilities. He or she shall make such rules and regu-  
20 lations, not in conflict with the statutes of this state, for the  
21 government of the officers and other employees of the department  
22 assigned to said facilities, and in regard to the duties to be performed  
23 by them, and for the government and discipline of each correctional  
24 facility, as he or she may deem proper, and shall cause such rules and  
25 regulations to be recorded by the superintendent of the facility, and a  
26 copy thereof to be furnished to each employee assigned to the facility.  
27 With due consideration for overall safety and security, he or she shall  
28 also have the power to place reasonable limits or restrictions on the

1 size of any container or bag an employee may wish to bring into a  
2 correctional facility or community supervision office when reporting for  
3 duty, including but not limited to reasonable limits or restrictions on  
4 the size or type of lunch container or bag, as well as reasonable limits  
5 or restrictions on items that can pose a threat or be used as a weapon.  
6 He or she shall also prescribe a system of accounts and records to be  
7 kept at each correctional facility, which system shall be uniform at all  
8 of said facilities, and he or she shall also make rules and regulations  
9 for a record of photographs and other means of identifying each inmate  
10 received into said facilities. He or she shall appoint and remove,  
11 subject to the civil service law and rules, subordinate officers and  
12 other employees of the department who are assigned to correctional  
13 facilities.

14 § 9. This act shall take effect on the thirtieth day after it shall  
15 have become a law; provided, however, that the amendments to subdivi-  
16 sions 1 and 6 of section 8 of the correction law made by section two of  
17 this act shall not affect the expiration of such section and shall be  
18 deemed to expire therewith; provided, further, that sections four and  
19 five of this act shall take effect upon the expiration of the current  
20 collective bargaining agreement that governs impacted employees of the  
21 department of corrections and community supervision, provided that the  
22 commissioner of corrections and community supervision shall notify the  
23 legislative bill drafting commission upon the expiration of the current  
24 collective bargaining agreement that governs impacted employees of the  
25 department of corrections and community supervision in order that the  
26 commission may maintain an accurate and timely effective data base of  
27 the official text of the laws of the state of New York in furtherance of  
28 effectuating the provisions of section 44 of the legislative law and

1 section 70-b of the public officers law. Provided further, that  
2 notwithstanding any other provision of law to the contrary, once these  
3 provisions take effect they cannot be abrogated, amended, enhanced or  
4 modified in any way by future collective bargain.