



CHAIRMAN'S MEMORANDUM

NO. 6-2014

April 4, 2014

TO: SHERIFFS, COMMISSIONERS OF CORRECTION, AND CHIEF ADMINISTRATIVE OFFICERS

RE: Amendment of Correction Law §500-b

Please be advised that, effective March 31, 2014, New York State Correction Law §500-b was amended to change the minimum age classification in local correctional facilities in order to make the NYS Correction Law consistent with the Prison Rape Elimination Act (PREA). Inmates under the age of eighteen (18) must now be separately classified from those inmates eighteen (18) years of age and older. For your convenience, a copy of the legislation is attached.

Correction Law §500-b previously mandated local correctional facilities to classify inmates under the age of nineteen (19) years separately from those nineteen (19) years and older, requiring an assignment of facility housing that provides a physical separation between the two groups. Recently made effective, the U.S. Department of Justice's Prison Rape Elimination Act (PREA) National Standards (Part 115 of Title 28 of the Code of Federal Regulations) generally require separate housing assignments for youthful inmates (under 18 years of age) from adult inmates (18 years and above). Due to the disparate thresholds at which inmates were considered an "adult," local correctional facilities were rendered incapable of simultaneously complying with the separation requirements of New York State Correction Law and PREA. Essentially, jails were forced to establish three separate age classifications, those being 16-17, 18, and 19 and above. Combined with further classification obligations requiring the separation of different genders and security risks, the overwhelming majority of local correctional facilities did not contain the number of housing units necessary to provide such division.

By aligning New York State Correction Law §500-b with the inmate age classifications set forth in PREA, local correctional facilities will be more capable of complying with both state and federal requirements. Although the amendment is effective immediately, the Commission recognizes that safe and responsible implementation requires the re-classification of a facility's entire 18 year old population which, taking into account the size of the facility and required programming, could take some time. Should you have any questions with regard to this issue, please feel free to contact the Commission of Correction's Office of Counsel at (518) 485-2463.

Thomas A. Beilein, Chairman

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Thomas A. Beilein, Chairman
Phyllis Harrison-Ross, M.D., Commissioner
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PART M

7 Section 1. Subdivision 4 of section 500-b of the correction law, as
8 added by chapter 907 of the laws of 1984, is amended to read as follows:

9 4. No person under [nineteen] EIGHTEEN years of age shall be placed or
10 kept or allowed to be at any time with any prisoner or prisoners [nine-
11 teen] EIGHTEEN years of age or older, in any room, dormitory, cell or
12 tier of the buildings of such institution unless separately grouped to
13 prevent access to persons under [nineteen] EIGHTEEN years of age by
14 prisoners [nineteen] EIGHTEEN years of age or older.

15 S 2. Subparagraph 3 of paragraph (c) of subdivision 8 of section 500-b
16 of the correction law, as added by chapter 907 of the laws of 1984, is
17 amended to read as follows:

18 (3) persons under [nineteen] EIGHTEEN years of age with persons [nine-
19 teen] EIGHTEEN years of age or older; or

20 S 3. Subdivision 13 of section 500-b of the correction law, as amended
21 by chapter 574 of the laws of 1985, is amended to read as follows:

22 13. Where in the opinion of the chief administrative officer an emer-
23 gency overcrowding condition exists in a local correctional facility
24 caused in part by the prohibition against the commingling of persons
25 under [nineteen] EIGHTEEN years of age with persons [nineteen] EIGHTEEN
26 years of age or older or the commingling of persons [nineteen] EIGHTEEN
27 years of age or older with persons under [nineteen] EIGHTEEN years of
28 age, the chief administrative officer may apply to the commission for
29 permission to commingle the aforementioned categories of inmates for a
30 period not to exceed thirty days as provided herein. The commission
31 shall acknowledge to the chief administrative officer the receipt of
32 such application upon its receipt. The chief administrative officer
33 shall be permitted to commingle such inmates upon acknowledgment of
34 receipt of the application by the commission. The commission shall
35 assess the application within seven days of receipt. The commission
36 shall deny any such application and shall prohibit the continued commin-
37 gling of such inmates where it has found that the local correctional
38 facility does not meet the criteria set forth in this subdivision and
39 further is in substantial noncompliance with minimum staffing require-
40 ments as provided in commission rules and regulations. In addition, the
41 commission shall determine whether the commingling of such inmates
42 presents a danger to the health, safety or welfare of any such inmate.
43 If no such danger exists the chief administrative officer may continue
44 the commingling until the expiration of the aforementioned thirty day
45 period or until such time as he determines that the overcrowding which
46 necessitated the commingling no longer exists, whichever occurs first.
47 In the event the commission determines that such danger exists, it shall
48 immediately notify the chief administrative officer, and the commingling
49 of such inmates shall cease. Such notification shall include specific
50 measures which should be undertaken by the chief administrative officer,
51 to correct such dangers. The chief administrative officer may correct
52 such dangers and reapply to the commission for permission to commingle;
53 however, no commingling may take place until such time as the commission
54 certifies that the facility is now in compliance with the measures set
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1 forth in the notification under this subdivision. When such certifi-
2 cation has been received by the chief administrative officer, the
3 commingling may continue for thirty days, less any time during which the
4 chief administrative officer commingled such inmates following his
5 application to the commission, or until such time as he determines that

6 the overcrowding which necessitated the commingling no longer exists,
7 whichever occurs first. The chief administrative officer may apply for
8 permission to commingle such inmates for up to two additional thirty day
9 periods, in conformity with the provisions and the requirements of this
10 subdivision, in a given calendar year. For the period ending December
11 thirtieth, nineteen hundred eighty-four, a locality may not apply for
12 more than one thirty day commingling period.

13 S 4. This act shall take effect immediately, provided, however, that
14 the amendments to section 500-b of the correction law made by sections
15 one, two and three of this act shall not affect the repeal of such
16 section and shall be deemed to be repealed therewith.