

ARTICLE 3

STATE COMMISSION OF CORRECTION

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S 40. Definitions. As used in this article the following terms have the following meanings:

1. "Commission" means the state commission of correction.
2. "Local correctional facility" means any county jail, county penitentiary, county lockup, city jail, police station jail, town or village jail or lockup, court detention pen or hospital prison ward.
3. "Correctional facility" means any institution operated by the state department of correctional services, any local correctional facility, or any place used, pursuant to a contract with the state or a municipality, for the detention of persons charged with or convicted of a crime, or, for the purpose of this article only, a secure facility operated by the state division for youth.
4. "Municipal official" means (a) the sheriff or, where a local correctional facility is under the jurisdiction of a county department, the head of such department, and clerk of the board of supervisors, in the case of a county jail; (b) the sheriff or other officer having custody or administrative jurisdiction and the clerk of the board of supervisors, in the case of a county penitentiary; (c) the clerk of the board of supervisors in the case of a county lockup; (d) the mayor and the city clerk, in the case of a city jail or police station jail; (e) the supervisor and town clerk, in the case of a town jail or lockup; (f) the mayor and village clerk, in the case of a village jail or lockup; (g) the clerk of the board of supervisors of the county wherein located and the officer having custody or control, in the case of a court detention pen or a hospital prison ward.
5. "Board" means the correction medical review board.
6. "Council" means the citizen`s policy and complaint review council.

Sec. 41. State commission of correction; organization. 1.

There shall be within the executive department a state commission of correction. It shall consist of three persons to be appointed by the governor, by and with the advice and consent of the senate. The governor shall designate one of the appointed members as chairman to serve as such at the pleasure of the governor. The members shall devote full time to their duties and shall hold no other salaried public position.

2. The members shall hold office for terms of five years; provided that of the three members first appointed, one shall serve for a term of two years, one shall serve for a term of three years and one shall serve for a term of five years from January first next succeeding their appointment. No member shall serve for more than ten years. Any member of the commission may be removed by the governor for cause after an opportunity to be heard in his defense.

3. Any member chosen to fill a vacancy created other than by expiration of term shall be appointed for the unexpired term of the member whom he is to succeed. Vacancies caused by expiration of term or otherwise shall be filled in the same manner as original appointments.

S 42. Citizen`s policy and complaint review council; organization;

functions, powers and duties. (a) 1. There shall be within the commission a citizen`s policy and complaint review council. It shall consist of nine persons to be appointed by the governor, by and with the advice and consent of the senate. One person so appointed shall have served in the armed forces of the United States in Indochina at any time from the first day of January, nineteen hundred sixty-three, to an including the seventh day of May, nineteen hundred seventy-five who was discharged therefrom under other than dishonorable conditions, or shall be a duly licensed mental health professional who has professional experience or training with regard to post-traumatic stress syndrome. One person so appointed shall be an attorney admitted to practice in this state. One person so appointed shall be a former inmate of a correctional facility. One person so appointed shall be a former correction officer. One person so appointed shall be a former resident of a division for youth secure center. One person so appointed shall be a former employee of the division for youth who has directly supervised youth in a secure residential center operated by the division. In addition, the governor shall designate one of the full-time members other than the chairman of the commission as chairman of the council to serve as such at the pleasure of the governor.

2. The nine appointed members of the council shall hold office for five years; provided that of the seven members first appointed, two shall be

appointed for a term of one year, two shall be appointed for a term of two years, one shall be appointed for a term of three years, one shall be appointed for a term of four years and one shall be appointed for a term of five years from January first next succeeding their appointment. Any appointed member of the council may be removed by the governor for cause after an opportunity to be heard in his defense.

3. Any member chosen to fill in a vacancy created other than by expiration of term shall be appointed for the unexpired term of the member whom he is to succeed. Vacancies caused by the expiration of term or otherwise shall be filled in the same manner as original appointments.

4. The members of the council other than the chairman shall receive no compensation for their services but each member other than the chairman shall be entitled to receive his or her actual and necessary expenses incurred in the performance of his or her duties.

5. No appointed member of the council shall qualify or enter upon the duties of his office, or remain therein, while he is an officer or employee of the department of correctional services or any correctional facility or is in a position where he exercises administrative supervision over any correctional facility. The council shall have such staff as shall be necessary to assist it in the performance of its duties within the amount of the appropriation therefor as determined by the chairman of the commission.

(b) The council and each member thereof shall have the following functions, powers and duties:

1. To investigate, review or take such other action as shall be deemed necessary or proper with respect to complaints or grievances regarding any local correctional facility or part thereof as shall be called to its attention in writing.

2. To have access, at any and all times, to any local correctional facility or part thereof and to all books, records, and data pertaining to any local correctional facility which are deemed necessary for carrying out the council's functions, powers and duties.

3. To obtain from administrators, officers or employees of any local correctional facility any information deemed necessary for the purpose of carrying out its functions, powers and duties.

4. To request and receive temporary office space in any local correctional facility for the purpose of carrying out its functions, powers and duties.

5. To report periodically to the commission and, where appropriate, to make such recommendations as are necessary to fulfill the purposes of this article to the commission and to the administrator of any local correctional facility.

(c) In addition to the functions, powers and duties prescribed by subdivision (b) of this section, the council shall

1. Advise and assist the commission in developing policies, plans and programs for improving the commission's performance of its duties and for coordinating the efforts of the commission and of correctional officials to improve conditions of care, treatment, safety, supervision, rehabilitation, recreation, training and education in correctional facilities;
2. Foster and promote research and study in areas of correctional policy and program development deemed necessary or desirable by the commission or the council;
3. Meet at least once per calendar month at a time and place designated by the chairman of the council.

S 43. Correction medical review board; organization. 1. There shall be within the commission a correction medical review board. It shall consist of six persons to be appointed by the governor by and with the advice and consent of the senate. In addition, the governor shall designate one of the full-time members other than the chairman of the commission and the chairman of the council as chairman of the board to serve as such at the pleasure of the governor. Of the appointed members of the board one shall be a physician duly licensed to practice in this state; one shall be a physician duly licensed to practice in this state and a board certified forensic pathologist; one shall be a physician duly licensed to practice in this state and shall be a board certified forensic psychiatrist; one shall be an attorney admitted to practice in this state; two shall be members appointed at large.

2. The six appointed members of the board shall hold office for five years; provided that of the two members first appointed, after December thirty-first, nineteen hundred eighty-seven who are not appointed to succeed any other member of the board, one shall be appointed for a term of four years and one shall be appointed for a term of five years from January first next succeeding their appointment. Any appointed member of the board may be removed by the governor for cause after an opportunity to be heard in his defense.

3. Any member chosen to fill a vacancy created other than by expiration of term shall be appointed for the unexpired term of the member whom he is to succeed. Vacancies caused by expiration of term or otherwise shall be filled in the same manner as original appointments.

4. The members of the board shall receive no compensation for their services but each member shall be entitled to receive his actual and necessary expenses incurred in the performance of his duties.

Sec. 44. Chairman of commission. 1. The chairman shall be the executive officer of the commission, the board and the council.

2. The chairman may appoint such assistants, officers and

employees, committees and consultants for the board and the council as he may determine necessary, prescribe their powers and duties, fix their compensation and provide for reimbursement of their expenses within amounts appropriated therefor.

3. The chairman may, from time to time, create, abolish, transfer and consolidate bureaus and other units within the commission, the board and the council not expressly established by law as he may determine necessary for the efficient operation of the commission, the board and the council, subject to the approval of the director of the budget.

4. The chairman may request and receive from any department, division, board, bureau, commission or other agency of the state or any political subdivision thereof or any public authority such assistance, information and data as will enable the commission, the board and the council properly to carry out its functions, powers and duties.

S 45. Functions, powers and duties of the commission. The commission shall have the following functions, powers and duties:

1. Advise and assist the governor in developing policies, plans and programs for improving the administration of correctional facilities and the delivery of services therein.

2. Make recommendations to administrators of correctional facilities for improving the administration of such correctional facilities and the delivery of services therein.

3. Visit, inspect and appraise the management of correctional facilities with specific attention to matters such as safety, security, health of inmates, sanitary conditions, rehabilitative programs, disturbance and fire prevention and control preparedness, and adherence to laws and regulations governing the rights of inmates.

4. Establish procedures to assure effective investigation of grievances of, and conditions affecting, inmates of local correctional facilities. Such procedures shall include but not be limited to receipt of written complaints, interviews of persons, and on-site monitoring of conditions. In addition, the commission shall establish procedures for the speedy and impartial review of grievances referred to it by the commissioner of the department of correctional services.

5. Ascertain and recommend such system of employing inmates of correctional facilities as may, in the opinion of said commission, be for the best interest of the public and of said inmates and not in conflict with the provisions of the constitution or laws of the state relating to the employment of inmates.

6. Promulgate rules and regulations establishing minimum standards for the care, custody, correction, treatment, supervision, discipline, and other correctional programs for all persons confined in correctional

facilities. Such rules and regulations shall be forwarded to the governor, the temporary president of the senate and the speaker of the assembly no later than January first, nineteen hundred seventy-six and annually thereafter.

6-a. Promulgate rules and regulations to assure that persons in custody in local correctional facilities, including persons awaiting arraignment, are furnished or have access to the type of food required by their religious dietary rules or medically prescribed diets, if any.

6-b. Promulgate rules and regulations, in consultation with the division for youth, establishing minimum standards for the care, custody, rehabilitation, treatment, supervision, discipline and other programs for correctional facilities operated by the division for youth.

7. Place such members of its staff as it deems appropriate as monitors in any local correctional facility which, in the judgment of the commission, presents an imminent danger to the health, safety or security of the inmates or employees of such correctional facility or of the public.

8. Close any correctional facility which is unsafe, insanitary or inadequate to provide for the separation and classification of prisoners required by law or which has not adhered to or complied with the rules or regulations promulgated with respect to any such facility by the commission pursuant to the provisions of subdivision six; provided, however, that before such facility may be closed, the commission shall cause a citation to be mailed to the appropriate municipal or other official at least ten days before the return day thereof directing the responsible authorities designated to appear before such commission at the time and place set forth in the citation, and show cause why such correctional facility should not be closed. After a hearing thereon or upon the failure to appear, such commission is empowered to order such facility designated in the citation closed within twenty days, during which time the respondent authority may review such order in the manner provided in article seventy-eight of the civil practice law and rules, in the supreme court. Fifteen days after the order to close has been served by a registered letter upon the appropriate official if no court review has been taken, and fifteen days after the order of such commission has been confirmed by the court, in case of court review, such facility designated in the order shall be closed, and it shall be unlawful to confine or detain any person therein and any officer confining or detaining any person therein shall be guilty of a class A misdemeanor.

9. For the purpose of providing for adequate care, custody, correction, treatment, supervision, discipline and other correctional programs for all persons confined in correctional facilities, the commission shall establish, maintain and operate a correctional training program for such personnel employed by correctional facilities as the

commission shall deem necessary. Such program shall be satisfactorily completed by such personnel prior to their undertaking their duties or within one year following the date of their appointment or at such times as the commission may prescribe; provided, however, the commission may exempt from such requirement (i) personnel employed by any correctional facility which, in the opinion of the commission, maintains and operates a basic correctional training program of a standard equal to or higher than that established, maintained and operated by the commission, and (ii) such personnel employed by any correctional institution as of the effective date of this section who, in the opinion of the commission, possess sufficient qualifications for the care, custody, correction, treatment, supervision and discipline of persons confined in correctional facilities. The cost of such program shall be borne by the commission within the amount available therefor by appropriation; provided, however, that the salary and actual expenses of personnel engaged in such program shall be borne by the correctional facility employing them.

9-a. For the purpose of providing for adequate care, custody, correction, treatment, supervision, discipline and other correctional programs for all persons confined in local correctional facilities, the commission shall promulgate rules and regulations for the certification of part-time local correctional officers employed by local correctional facilities who have satisfactorily completed an in-service correctional training program sponsored by the local correctional facility. The program shall include the same instruction which is given to local correctional officers who attend training sessions which are sponsored by the commission.

10. Approve or reject plans and specifications for the construction or improvement of correctional facilities.

11. Collect and disseminate statistical and other information and undertake research, studies and analyses, through the personnel of the commission or in cooperation with any public or private agency in respect to the administration, programs, effectiveness and coordination of correctional facilities.

12. Make an annual report to the governor and legislature concerning its work and the work of the board and the council during the preceding year, and such further interim reports to the governor, or to the governor and legislature, as it shall deem advisable, or as shall be required by the governor.

13. Accept, with the approval of the governor, as agent of the state any grant, including federal grants, or any gift for any of the purposes of this article. Any moneys so received may be expended by the commission to effectuate any purpose of this article, subject to the same limitations as to approval of expenditures and audit as are prescribed for state moneys appropriated for the purposes of this

article.

14. Enter into contracts with any person, firm, corporation, municipality, or governmental agency.

15. Adopt, amend or rescind such rules and regulations as may be necessary or convenient to the performance of the functions, powers and duties of the commission.

16. Do all other things necessary or convenient to carry out its functions, powers and duties expressly set forth in this article.

S 46. Additional functions, powers and duties of the commission. 1. The commission, any member or any employee designated by the commission must be granted access at any and all times to any correctional facility or part thereof and to all books, records, and data pertaining to any correctional facility deemed necessary for carrying out the commission's functions, powers and duties. The commission, any member or any employee designated by the chairman may require from the officers or employees of a correctional facility any information deemed necessary for the purpose of carrying out the commission's functions, powers and duties.

2. In the exercise of its functions, powers and duties, the commission and any member is authorized to issue and enforce a subpoena and a subpoena duces tecum, administer oaths and examine persons under oath, in accordance with and pursuant to civil practice law and rules. A person examined under oath pursuant to this subdivision shall have the right to be accompanied by counsel who shall advise the person of their rights subject to reasonable limitations to prevent obstruction of, or interference with, the orderly conduct of the examination.

3. In any case where a person in charge or control of a correctional facility or an officer or employee thereof shall fail to comply with the provisions of subdivision one, the commission may apply to the supreme court for an order directed to such person requiring compliance therewith. Upon such application the court may issue such order as may be just and a failure to comply with the order of the court shall be a contempt of court and punishable as such.

4. In any case where any rule or regulation promulgated by the commission pursuant to subdivision six of section forty-five or the laws relating to the construction, management and affairs of any correctional facility or the care, treatment and discipline of its inmates, are being or are about to be violated, the commission shall notify the person in charge or control of the facility of such violation, recommend remedial action, and direct such person to comply with the rule, regulation or law, as the case may be. Upon the failure of such person to comply with the rule, regulation or law the commission may apply to the supreme court for an order directed to such person requiring compliance with such rule, regulation or law. Upon such application the court may issue

such order as may be just and a failure to comply with the order of the court shall be a contempt of court and punishable as such.

Sec. 47. Functions, powers and duties of the board. 1. The board shall have the following functions, powers and duties:

(a) Investigate and review the cause and circumstances surrounding the death of any inmate of a correctional facility.

(b) Visit and inspect any correctional facility wherein an inmate has died.

(c) Cause the body of the deceased to undergo such examinations, including an autopsy, as in the opinion of the board, are necessary to determine the cause of death, irrespective of whether any such examination or autopsy shall have previously been performed.

(d) Upon review of the cause of death and circumstances surrounding the death of any inmate, the board shall submit its report thereon to the commission and, where appropriate, make recommendations to prevent the recurrence of such deaths to the commission and the administrator of the appropriate correctional facility.

(e) Investigate and report to the commission on the condition of systems for the delivery of medical care to inmates of correctional facilities and where appropriate recommend such changes as it shall deem necessary and proper to improve the quality and availability of such medical care.

2. Every administrator of a correctional facility shall immediately report to the board the death of an inmate of any such facility in such manner and form as the board shall prescribe, together with an autopsy report.

Sec. 48. Preference. Any action or proceeding commenced by the commission pursuant to this article shall have a preference over all other cases, except habeas corpus proceedings, pending before the court.