Miscellaneous

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PART 7200 PUBLIC ACCESS TO RECORDS

Section 7200.1. Policy

Consistent with the requirements of this Part, the commission shall furnish to the public the information and records required by the Freedom of Information Law, as well as records otherwise available by law.

History

Sec. added by renum. 7700.1, filed May 3, 1983 eff. May 3, 1983.

Section 7200.2. Designation of records access officer

(a) The following person has been designated as records access officer to the commission:
Public Information Officer, New York State Commission of Correction, Alfred E. Smith State Office Building, 80 S. Swan Street, 12th Floor, Albany, NY 12210-8001.

(b) The records access officer shall ensure that the commission responds to requests for access to records in accordance with the provisions of this Part.

(c) The records access officer shall:

(1) maintain an up-to-date subject matter list;

(2) assist the requester in identifying requested records, if necessary;

(3) upon locating the records, take one of the following actions:

(i) make records available for inspection; or

(ii) deny access to the records in whole or in part, and explain in writing the reasons therefor;

(4) upon request for copies of records:

(i) make a copy available upon payment or offer to pay the fees required pursuant to section 7200.7 of this Part; or

(ii) permit the requester to copy those records;

(5) upon request, certify that a record is a true copy; and

(6) upon failure to locate records, certify that:

(i) the commission is not the custodian for such records; or

(ii) the records of which the commission is a custodian cannot be found after diligent search.

History

Sec. added by renum. 7700.2, filed May 3, 1983; amds. filed: July 21, 1987; Aug. 18, 1994; March 24, 1998; Oct. 21, 2005 eff. Nov. 9, 2005; amd. filed May 21, 2013 eff. June 5, 2013.

Section 7200.3. Location

Records shall be available for public inspection and copying at: State Commission of Correction, Alfred E. Smith State Office Building, 80 S. Swan Street, 12th Floor, Albany, NY 12210-8001.

History

Sec. added by renum. 7700.3, filed May 3, 1983; amds. filed: Aug. 18, 1994; March 24, 1998; Oct. 21, 2005 eff. Nov. 9, 2005; amd. filed May 21, 2013 eff. June 5, 2013.

Section 7200.4. Hours for public inspection

Requests for public access to records of the commission shall be accepted, and records produced, on any business day between the hours of 9 a.m. and 4 p.m.

History

Sec. added by renum. 7700.4, filed May 3, 1983 eff. May 3, 1983.

Section 7200.5. Requests for public access to records

(a) Except as otherwise provided in this section, all requests for access to records of the commission shall be in writing and shall reasonably describe the record or records sought. Such description may include dates, file designations or any other available identifying information.

(b) The records access officer may, in his discretion, accept oral requests for records.

(c) Within five business days of receipt of a request for a record, the records access officer shall:

(1) make such record available to the person requesting it;

(2) deny such request in accordance with the provisions of section 7200.6 of this Part; or

(3) furnish a written acknowledgment of the receipt of such request and a statement of the approximate date when the request will be granted or denied.

History

Sec. added by renum. 7700.5, filed May 3, 1983; amd. filed Aug. 3, 1992 eff. Aug. 19, 1992. Repealed (d).

Section 7200.6. Denial of access to records

(a) If the records access officer determines that a written request for access to a record or records pertains to information which is exempt under the provisions of the Freedom of Information Law, he shall deny the request. Such denial shall be in writing and shall:

(1) state the specific facts and reasons for the denial; and

(2) advise the requester of the right to appeal such denial to the State Commission of Correction.

(b) Any person whose request for access to records has been denied pursuant to subdivision (a) of this section may, within 30 days, appeal such denial to the Special Counsel, State Commission of Correction, Alfred E. Smith State Office Building, 80 S. Swan Street, 12th Floor, Albany, NY 12210-8001. Such appeal shall be in writing and shall include:

(1) the date of the request for access to records;

(2) the location of the records sought;

(3) a description of the records to which the requester was denied access;

(4) a statement as to whether the denial of access was in writing or was a failure to grant or deny access within the time period required by section 7200.5(d) of this Part; and

(5) the name and address of the requester.

(c) The commission, upon receipt of a written appeal, shall forward a copy of such appeal to the Committee on Public Access to Records, New York State Department of State, 41 State Street, Albany, NY 12231.

(d) Within 10 days of receipt of a written appeal, the commission shall inform the requester in writing of its determination to affirm or reverse the denial. If the denial is affirmed, the determination shall include the reasons for denial of access to the requested records. A copy of the determination shall be forwarded to the Committee on Public Access to Records.

History

Sec. added by renum. 7700.6, filed May 3, 1983; amds. filed: July 21, 1987; Aug. 3, 1992; Aug. 18, 1994; March 24, 1998; Oct. 21, 2005 eff. Nov. 9, 2005; amd. filed May 21, 2013 eff. June 5, 2013.

Section 7200.7 Fees for copies of records

The fee for copies of records shall be 25 cents per page not in excess of 9 inches by 14 inches, or actual cost of reproducing any other record.

History

Sec. added renum 7700.7 fled May 3, 1983 eff. May 3, 1983.

Section 7200.8. Subject matter list

(a) The records access officer shall maintain a reasonably detailed current list, by subject matter, of all records in the possession of the agency, whether or not such records are available pursuant to the Freedom of Information Law.

(b) The subject matter list shall be sufficiently detailed to permit identification of the category of the record sought.

(c) The subject matter list shall be updated not less than twice per year. The most recent update shall appear on the first page of the subject matter list.

History

Sec. added by renum. 7700.8, filed May 3, 1983 eff. May 3, 1983.

Section 7200.9 Public notice

The commission shall post a notice containing the title and business address of the records access officer, the persons determining appeals, and the location where records can be seen or copied, in a conspicuous location where records are kept.

History

Sec. added by renum. 7700.9, filed May 3, 1983 eff. May 3, 1983.

Section 7200.10. Severability

If any provision of these regulations or the application thereof to any person or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of these regulations or the application thereof to other persons and circumstances.

History

Sec. added by renum. 7700.10, filed May 3, 1983 eff. May 3, 1983.

PART 7201 CONFIDENTIALITY OF HUMAN IMMUNODEFICIENCY VIRUS-RELATED INFORMATION

Section 7201.1. Policy

Consistent with the requirements of Public Health Law, article 27-F, its implementing regulations, Part 7064 of this Title, and this Part, the commission shall obtain, retain and disclose only such HIV- and AIDS-related information as is relevant and necessary to accomplish the mandates of the commission and as authorized by article 3 of the Correction Law, Executive Order, or any other statutory provision.

History

Sec. filed: April 17, 1989 as emergency measure; June 30, 1989 eff. July 19, 1989.

Section 7201.2. Safeguards to prevent discrimination

In the discharge of their official duties or in the course of their employment by or appointment to the commission, no member thereof, employee, agent, member of the medical review board or member of the citizens' policy and complaint review council shall unlawfully discriminate against any person based upon such person's HIV antibody status, AIDS-related illness or diagnosis of AIDS or lack thereof.

History

Sec. filed: April 17, 1989 as emergency measure; June 30, 1989 eff. July 19, 1989.

Section 7201.3. Confidentiality and disclosure

Confidential HIV-related information obtained by any person in the discharge of their official duties or in the course of their employment by or appointment to the commission, or by any member or agent thereof, or any member of the medical review board or member of the citizens' policy and complaint review council may be disclosed only pursuant to Public Health Law, article 27-F, its implementing regulations, Part 7064 of this Title, and this Part.

History

Sec. filed: April 17, 1989 as emergency measure; June 30, 1989 eff. July 19, 1989.

Section 7201.4. Access to HIV-related information

(a) Confidential HIV- and AIDS-related information shall only be made available to and received and retained by the commission to the extent relevant and necessary to accomplish the

mandates of the commission as authorized by article 3 of the Correction Law, executive order or any statutory provision.

(b) Confidential HIV- and AIDS-related information shall be received by, made available to, or retained only by the following and only to the extent necessary to carry out the express functions, powers and duties of the commission:

(1) members of the commission or, as set forth in a written authorization specifically issued for the purpose, their designees;

(2) counsel to the commission or, as necessary to carry out the express functions, powers and duties of the commission, assistant counsels to the commission;

(3) members of the medical review board and commission staff acting on behalf of such board as necessary in order to carry out the express functions, powers and duties of the board; and

(4) members of the citizens' policy and complaint review council and commission staff acting on behalf of such council as necessary in order to carry out the express functions, powers and duties of the council.

(c) Redisclosure by the commission.

(1) All written disclosures of confidential HIV information must be accompanied by a statement prohibiting redisclosure. The statement shall include the following language or substantially similar language: “This information has been disclosed to you from confidential records which are protected by State law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of State law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is not sufficient authorization for further disclosure. Disclosure of confidential HIV information that occurs as the result of a general authorization for the release of medical or other information will be a violation of the State law and may result in a fine or jail sentence or both.”

(2) If oral disclosures are necessary, they must be accompanied or followed as soon as possible, but no later than 10 days, by the statement required by paragraph (1) of this subdivision.

(3) The statement required by paragraphs (1) and (2) of this subdivision is not required for release to the protected person or to his or her legal representative, for releases made by a physician or public health officer to a contact, or for releases made by a physician to a person authorized pursuant to law to consent to the health care of the protected person when the person has been counselled and the disclosure is medically necessary pursuant to Public Health Law, section 2782(4)(e). For disclosures of

confidential HIV-related information from the patient's medical record to persons who are permitted access to the information pursuant to section 7064.8(a)(3), (4), (6), (7), (9) and (10) and (e) and (f) of this Title, it shall be sufficient for the statement required by paragraphs (1) and (2) of this subdivision to appear in the medical record itself.

History

Sec. filed: April 17, 1989 as emergency measure; June 30, 1989 eff. July 19, 1989.

Section 7201.5. Intra-agency confidentiality

(a) No employee, agent or member of the commission or any member of the citizens' policy and complaint review council or member of the medical review board shall have access to health information relating to any identified person, including confidential HIV-related information on any person, except in connection with the following activities:

(1) investigation into the death of any inmate pursuant to article 3 of the Correction Law;

(2) investigation or evaluation of health care in any correctional facility;

(3) monitoring and providing technical assistance to any correctional facility or operator thereof;

(4) maintenance of statistical data as authorized by law;

(5) research studies approved by the commission;

(6) as necessary in the ordinary course of business to provide legal services to the commission; and

(7) as otherwise relevant and necessary to carry out the express statutory functions, powers and duties of the commission.

(b) No employee, agent, or member of the commission, or any member of the citizens' policy and complaint review council or member of the medical review board, who has access to confidential HIV-related information shall disclose such information to any other person unless such person also has access to confidential HIV-related information as described in this Part, section 7064 of this Title, or as authorized by Public Health Law, article 27-F or its implementing regulations.

(c) Each employee of the State Commission of Correction who is given authorized access to the commission's records of an identified person that contain HIV-related information shall:

(1) be advised in writing that such person shall not:

(i) examine documents containing HIV-related information unless required to do so in the course of his or her official duties;

(ii) remove or copy any such documents unless he or she is acting within the scope of his or her assigned duties; or

(iii) discuss the content of any such documents with any person unless that person is authorized to have access to such documents;

(2) sign a statement attesting that he or she has read the above restrictions and stating that he or she understands that violation may lead to disciplinary action, including suspension or dismissal from employment and that such violation may be against New York State law and lead to arrest and criminal prosecution.

History

Sec. filed: April 17, 1989 as emergency measure; June 30, 1989 eff. July 19, 1989.

PART 7202 ACCESS TO PERSONAL INFORMATION

Section 7202.1. Policy

(a) Consistent with the requirements of this Part, the commission shall maintain in its records only such personal information as is relevant and necessary to accomplish the mandates of the commission as authorized by article 3 of the Correction Law, executive order, or any statutory provision.

(b) Personal information shall be collected, whenever practicable, directly from the person to whom the information pertains, and shall be maintained in an accurate, relevant, timely and complete manner.

History

Sec. added by renum. 7400.1, filed Jan. 22, 1999 eff. Feb. 10, 1999.

Section 7202.2. Definitions

(a) **Data subject** shall mean any natural person about whom personal information has been collected by the commission.

(b) **Personal information** shall mean any information concerning a data subject which, because of name, number, symbol, mark or other identification, can be used to identify that data subject.

History

Sec. added by renum. 7400.2, filed Jan. 22, 1999 eff. Feb. 10, 1999.

Section 7202.3. Applicability

Pursuant to section 94(8) of the Public Officers Law, this Part shall not apply to a record of the commission which pertains to investigation, law enforcement, confinement of persons in correctional facilities, or supervision of persons pursuant to criminal conviction or court order.

History

Sec. added by renum. 7400.3, filed Jan. 22, 1999 eff. Feb. 10, 1999.

Section 7202.4. Designation of privacy compliance officer

(a) The following person has been designated as privacy compliance officer to the commission: Records Access Officer, New York State Commission of Correction, Alfred E. Smith State Office Building, 80 S. Swan Street, 12th Floor, Albany, NY 12210-8001.

(b) The privacy compliance officer shall ensure compliance with the Personal Privacy Protection Law in accordance with the provisions of this Part.

(c) The privacy compliance officer shall:

(1) assist a data subject in identifying and requesting personal information, if necessary;

(2) take one of the following actions upon locating the record sought:

(i) make the record available for inspection, in a printed form without codes or symbols, unless an accompanying document explaining such codes or symbols is also provided; or

(ii) deny access to the records in whole or in part, and explain in writing the reasons therefor;

(3) Upon request for copies of records:

(i) make a copy available upon payment or offer of payment of fees required pursuant to section 7202.13 of this Part; or

(ii) permit the requestor to copy these records;

(4) upon request, certify that a record is a true copy; and

(5) upon failure to locate records, certify that:

(i) the commission is not the custodian for such records;

(ii) the commission cannot locate the record after having made a diligent search; or

(iii) the information sought cannot be retrieved by use of the description thereof, or by use of the name or other identifier of the data subject without extraordinary search methods being employed by the commission.

History

Sec. added by renum. and amd. 7400.4, filed Jan. 22, 1999; amd. filed Oct. 21, 2005 eff. Nov. 9, 2005; amd. filed May 21, 2013 eff. June 5, 2013.

Section 7202.5. Proof of identity

(a) The privacy compliance officer may require appropriate identification, such as a driver's license, an identifier assigned to the data subject by the agency, a photograph, or similar information that confirms that the record sought pertains to the data subject.

(b) When a request if made by mail, the privacy compliance officer may require verification of a signature or inclusion of an identifier generally known only by a data subject, or similar appropriate identification.

(c) Proof of identity shall not be required regarding a request for a record accessible to the public pursuant to article 6 of the Public Officers Law.

History

Sec. added by renum. 7400.5, filed Jan. 22, 1999 eff. Feb. 10, 1999.

Section 7202.6. Location

Records shall be available for public inspection at State Commission of Correction, Alfred E. Smith State Office Building, 80 S. Swan Street, 12th Floor, Albany, NY 12210-8001.

History

Sec. added by renum. 7400.6, filed Jan. 22, 1999; amd. filed Oct. 21, 2005 eff. Nov. 9, 2005; amd. filed May 21, 2013 eff. June 5, 2013.

Section 7202.7. Hours for public access to records

Requests for public access to records of the commission shall be accepted, and records produced, on any business day between the hours of 9 a.m. and 4 p.m.

History

Sec. added by renum. 7400.7, filed Jan. 22, 1999 eff. Feb. 10, 1999.

Section 7202.8. Requests for public access to records

(a) All requests shall be made in writing, except that the privacy compliance officer may, in his discretion, accept oral requests after the applicant has demonstrated proof of identity.

(b) All requests shall reasonably describe the record or records sought. Whenever possible, the data subject shall supply identifying information that assists the commission in locating the records sought.

(c) Within five business days of the receipt of a request, the privacy compliance officer shall:

(1) provide access to the record;

(2) deny access in writing, explaining the reasons therefor; or

(3) acknowledge the receipt of the request in writing, stating the request will be granted or denied, within 30 days from the date of the acknowledgment**.**

History

Sec. added by renum. 7400.8, filed Jan. 22, 1999 eff. Feb. 10, 1999.

Section 7202.9. Amendment of records

Within 30 business days of a request from a data subject for correction or amendment of a record of personal information that is reasonably described and that pertains to the data subject, the privacy compliance officer shall:

(a) make the amendment or correction in whole or in part and inform the data subject that, on request, such correction or amendment will be provided to any person or governmental unit to which the record or personal information has been or is disclosed pursuant to paragraph (d), (i) or (l) of section 96(1) of the Public Officers Law; or

(b) inform the data subject in writing of its refusal to correct or amend the record, including the reasons therefor.

History

Sec. added by renum. 7400.9, filed Jan. 22, 1999 eff. Feb. 10, 1999.

Section 7202.10. Denial of request for a record or amendment or correction of a record or personal information

Denial of a request for records or amendment of correction of a record or personal information shall:

(a) state the specific facts and reasons for the denial; and

(b) advise the requestor of the right to appeal such denial to the State Commission of Correction.

History

Sec. added by renum. 7400.10, filed Jan. 22, 1999 eff. Feb. 10, 1999.

Section 7202.11. Appeal

(a) Any person denied access to a record or denied a request to amend or correct a record or personal information, may appeal to: Special Counsel, State Commission of Correction, Alfred E. Smith State Office Building, 80 S. Swan Street, 12th Floor, Albany, NY 12210-8001.

(b) The time for deciding on appeal shall commence upon receipt of an appeal that identifies:

(1) the date and location of a request for a record or amendment or correction of a record or personal information;

(2) the record that is the subject of the appeal; and

(3) the name and return address of the appellant.

(c) Within seven business days of an appeal of a denial of access, or within 30 days of an appeal concerning a denial of a request for correction of amendment, the person determining such appeals shall:

(1) provide access to or correct or amend the record or personal information; or

(2) fully explain in writing the factual and statutory reasons for further denial and inform the data subject of the right to seek judicial review of such determination pursuant to article 78 of the Civil Practice Law and Rules.

(d) If, on appeal, a record or personal information is corrected or amended, the data subject shall be informed that, on request, the correction or amendment will be provided to any person or governmental unit to which the record or personal information has been or is disclosed pursuant to paragraph (d), (i) or (l) of section 96(1) of the Public Officers Law.

(e) The commission shall immediately forward to the Committee on Open Government a copy of any appeal made pursuant to his Part upon receipt, and the determination thereof and the reasons therefor at the time of such determination.

History

Sec. added by renum. 7400.11, filed Jan. 22, 1999; amd. filed Oct. 21, 2005 eff. Nov. 9, 2005; amd. filed May 21, 2013 eff. June 5, 2013.

Section 7202.12. Statement of disagreement by data subject

(a) If correction or amendment of a record or personal information is denied in whole or in part upon appeal, the determination rendered pursuant to the appeal shall inform the data subject of the right to:

(1) file with the commission a statement of reasonable length setting forth the data subject's reasons for disagreement with determination; or

(2) request that such a statement of disagreement be provided to any person or governmental unit to which the record has been or is disclosed pursuant to paragraph (d), (i) or (l) of section 96(1) of the Public Officers Law.

(b) Upon receipt of a statement of disagreement by a data subject, the commission shall:

(1) clearly note any portions of the record that are disputed; and

(2) attach the data subject's statement as part of the record.

(c) When providing a data subject's statement of disagreement to a person or governmental unit in conjunction with a disclosure made pursuant to paragraph (d), (i) or (l) of section 96(1) of the Public Officers Law, the commission may also include a concise statement of its reasons for not making the requested amendment or correction.

History

Sec. added by renum. 7400.12, filed Jan. 22, 1999 eff. Feb. 10, 1999.

Section 7202.13. Fees

(a) Unless otherwise prescribed by statute, there shall be no fee charged for:

(1) inspection of records;

(2) search for records; or

(3) any certification pursuant to this Part.

(b) The fees for copies of records shall be 25 cents per page of record not in excess of 9 inches x 14 inches, or the actual cost of reproduction if the page is in excess of 9 inches x 14 inches or is not capable of being photocopied. The fee for copies of records may be waived in the discretion of the privacy compliance officer.

History

Sec. added by renum. 7400.13, filed Jan. 22, 1999 eff. Feb. 10, 1999.

Section 7202.14. Accounting of disclosures

(a) The commission shall keep an accounting of all disclosures made pursuant to paragraphs (d), (i) and (l) of subdivision 1 of section 96 of the Public Officers Law.

(b) Such accounting shall be retained as part of the record disclosed for five years after disclosure of the record or the life of the record disclosed, whichever is longer.

History

Sec. added by renum. 7400.14, filed Jan. 22, 1999 eff. Feb. 10, 1999.

Section 7202.15. Severability

If any provision of this Part or the application thereof to any person or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons and circumstances.

History

Sec. added by renum. 7400.15, filed Jan. 22, 1999 eff. Feb. 10, 1999.

PART 7205 AGREEMENT FOR CUSTODY OF INMATES FROM OTHER STATES

Section 7205.1. Purpose

The purpose of this Part shall be to provide a mechanism and procedure by which a local correctional facility may seek and acquire Commission approval of an agreement to detain the inmates of another state pursuant to section 500-o of the Correction Law.

History

Sec. filed June 19, 2012 eff. July 3, 2012.

Section 7205.2. Definitions

As used in this Part, the following definitions shall apply to the terms listed below:

(a) **Commission** shall mean the State Commission of Correction.

(b) **Facility** shall mean a county jail or penitentiary or a correctional facility under the jurisdiction of the New York City Department of Correction.

(c) **Eligible inmate** shall mean an inmate, sentenced by the court of another state, to a term of imprisonment allowable pursuant to section 500-o of the Correction Law.

(d) **Legislature** shall mean the county legislature, board of supervisors or, with regard to the City of New York, the city council.

(e) **Chief executive officer** shall mean the chief executive officer of the county or, with regard to the City of New York, the mayor.

(f) **Agreement** shall mean an agreement by the sheriff, warden, superintendent, local commissioner of correction or other person in charge of a facility, with a correctional institution located in another state, to provide for the custody of eligible inmates in such facility.

History

Sec. filed June 19, 2012 eff. July 3, 2012; amd. filed Sept. 17, 2013 eff. Oct. 2, 2013.

Section 7205.3. Policy

(a) Except as provided by an agreement, approved by the legislature, chief executive officer and Commission, or pursuant to any other applicable law or regulation, a facility shall not detain an inmate committed or sentenced by the court of another state.

(b) Each eligible inmate confined to a facility shall be dealt with in all respects in the same manner as an inmate committed to the facility pursuant to paragraph (e) of Correction Law section 500-a.

(c) Notwithstanding the requirements of subdivision (b) of this section, an eligible inmate shall not be deprived of any legal right which such inmate would have had if confined in a correctional institution in the jurisdiction in which he or she was convicted.

(d) A facility's agreement to detain eligible inmates shall not have a detrimental effect upon the safety, security and good order of the facility, nor shall it result in a facility's violation of applicable laws and regulations, including, but not limited to, regulations controlling maximum facility capacity, inmate classification and staffing.

History

Sec. filed June 19, 2012 eff. July 3, 2012.

Section 7205.4. Application for Commission approval

Any application for Commission approval of an agreement shall be made in writing by the sheriff, warden, superintendent, local commissioner of correction or other person in charge of a facility, and shall include:

(a) a complete copy of the entire agreement, including all exhibits, appendices and any other record referenced therein;

(b) a copy of the approval of the legislature and chief executive officer;

(c) a written analysis by the facility's county attorney, or attorney representing the facility's chief administrative officer, which serves to identify each and every legal right, apart from those normally provided to inmates committed to the custody of the facility, that an eligible inmate would enjoy if confined in a correctional institution of the jurisdiction in which the eligible inmate was convicted;

(d) a written analysis by the facility's county attorney, or attorney representing the facility's chief administrative officer, which provides legal authority for the manner in which eligible inmates will be transported to and from the facility pursuant to the agreement;

(e) a written plan by the facility's chief administrative officer, including relevant policies and procedures, to provide eligible inmates each additional right identified in the analysis required by subdivision (c) of this section, including an analysis of the effect such additional provisions will have on staffing, inmate classification, facility capacity, and the overall safety, security and good order of the facility; and

(f) any further information and records deemed relevant by the facility's chief administrative officer.

History

Sec. filed June 19, 2012 eff. July 3, 2012.

Section 7205.5. Commission review of application

Upon receipt of an application, submitted pursuant to the requirements of section 7205.4 of this Part, the Commission shall conduct a review thereof, with consideration given to:

(a) the effect the agreement would have upon the safety, security and good order of the facility;

(b) the facility's ability to comply with the requirements of section 7205.3 of this Part; and

(c) the current state of the facility, including, but not limited to:

(1) inmate classification and capacity limitations;

(2) facility staffing;

(3) physical plant issues; and

(4) past compliance with relevant laws and regulations.

History

Sec. filed June 19, 2012 eff. July 3, 2012.

Section 7205.6. Commission determination

(a) Following an application review pursuant to section 7205.5 of this Part, the Commission shall render a determination. Such determination shall be in writing to the sheriff, warden, superintendent, local commissioner of correction or other person in charge of the facility, and shall signify the Commission's decision to either deny approval of the agreement, approve the agreement as submitted, or approve the agreement subject to required amendments or modifications.

(b) Any Commission determination granting approval pursuant to subdivision (a) of this section shall pertain only to the submitted agreement. Any amendment, modification, renewal or extension of the agreement, other than amendments or modifications required as a condition of Commission approval, shall require the submission of an application pursuant to the requirements of this Part.

(c) Following a determination granting approval pursuant to subdivision (a) of this section, and at any time during the duration of the agreement, the Commission may, for good cause, revoke such approval. The Commission's determination to revoke approval of the agreement may be based upon the following considerations:

(1) the effect the agreement has had upon the safety, security and good order of the facility;

(2) the facility's inability to comply with the requirements of section 7205.3 of this Part; or

(3) the current state of the facility, including, but not limited to:

(i) inmate classification and capacity limitations;

(ii) facility staffing;

(iii) physical plant issues; or

(iv) compliance with relevant laws and regulations.

History

Sec. filed June 19, 2012 eff. July 3, 2012.

Section 7205.7. Annual report

On or before the 15th day of February of each year, the chief administrative officer of a facility, which detained eligible inmates in the previous year pursuant to an agreement, shall forward a written report to the Commission setting forth:

(a) a description of each agreement; and

(b) the number of inmates confined pursuant to each agreement.

History

Sec. filed June 19, 2012 eff. July 3, 2012.

PART 7210 SUBSTITUTE JAIL ORDERS

Section 7210.1. Purpose

The purpose of this Part shall be to provide a mechanism and procedures for the alternate housing of inmates when the facility to which they are confined becomes unfit or unsafe for their confinement.

History

Renumbered from § 7300.1 adptd. by emergency rulemaking eff. Dec. 19, 2017, expired March 18, 2018; new adopted filed March 27, 2018 eff. April 11, 2018.

Section 7210.2. Definitions

(a) Commission means the State Commission of Correction.

(b) Commissioner means the Commissioner of the New York State Department of Corrections and Community Supervision.

(c) Facility means a county jail or penitentiary or a correctional institution under the jurisdiction of the New York City Department of Correction.

(d) Facility administrator means the chief administrative officer of a county jail or penitentiary.

(e) Institution means a correctional facility under the jurisdiction of the New York State Department of Corrections and Community Supervision.

(f) Suitable place means a building in the county which is capable of providing shelter and security for prisoners and which is designed and equipped to satisfy the requirements of State and local codes pertaining to sanitation, fire safety and public assembly.

(g) Extraordinary circumstances includes acts or substantial threats of acts of violence which threaten to breach the security of a facility, taking hostages, mass arrests, inmate disturbance, riot, escape or work stoppage.

(h) Civil disaster includes pestilential diseases, nuclear accidents and toxic chemical spills.

(i) Natural disaster includes fire, earthquake, flood, hurricane or landslide.

History

Renumbered from § 7300.2 adptd. by emergency rulemaking eff. Dec. 19, 2017, expired March 18, 2018; new adopted filed March 27, 2018 eff. April 11, 2018.

Section 7210.3. Designation of officer of the day

The commission shall designate one of its members or administrators as the officer of the day. Such person shall be responsible for making decisions governing emergencies and the granting of substitute jail orders at such times when the commission is not assembled, when a determination by the commission is not obtainable, or at times when the commission deems appropriate.

History

Renumbered from § 7300.3 adptd. by emergency rulemaking eff. Dec. 19, 2017, expired March 18, 2018; new adopted filed March 27, 2018 eff. April 11, 2018.

Section 7210.4. Applicability

The provisions of this Part shall affect the transfer of inmates:

(a) from a county jail or penitentiary to another suitable place in such county;

(b) from the county jail or penitentiary of one county to the county jail or penitentiary of another county;

(c) from a county jail or penitentiary to a facility under the jurisdiction of the New York City Department of Correction or to an institution under the jurisdiction of the New York State Department of Corrections and Community Supervision;

(d) from the New York City Department of Correction to a county jail or penitentiary; or

(e) consistent with the provisions of section 7300.6(e) of this Part, in returning such inmates from a correctional institution under the jurisdiction of the New York State Department of Corrections and Community Supervision to a county jail or penitentiary.

History

Renumbered from § 7300.4 adptd. by emergency rulemaking eff. Dec. 19, 2017, expired March 18, 2018; new adopted filed March 27, 2018 eff. April 11, 2018.

Section 7210.5. Criteria

(a) The commission shall issue a substitute jail order authorizing the confinement of some or all of the inmates of a facility in another suitable place or facility, or upon the consent of the commissioner, an institution, under any of the following circumstances:

(1) when the facility in which the inmate or inmates are confined becomes unfit or unsafe for their continued confinement, is unable to properly maintain its inmates or a

group of inmates in proper classification, or when the inmate count of such facility reaches a level which renders it unsafe or imprudent for the confinement of the total inmate population, and a reduction in the number of inmates is deemed advisable;

(2) when, as a result of natural or civil disaster, inmate disturbance or other factors which render it unsafe or unsound to house inmates in a given area, the evacuation of such inmates is required;

(3) when the safety or security of an inmate or group of inmates is threatened by their confinement in a facility and the facility administrator reasonably believes that the public interest, as well as the safety of the inmates, would be better served by their being housed in another suitable place or facility;

(4) when the facility is unable to provide vital services, such as medical, mental health and food services, and the facility administrator reasonably believes that such services are more readily available at another suitable place or facility; or

(5) when, due to extraordinary circumstances, the facility administrator determines that the public interest and facility security would be served by the transfer of an inmate or group of inmates to another suitable place or facility.

(b) The commission may issue either an individual order authorizing the transfer of an inmate or group of inmates from one facility to another or an open order which authorizes the facility to transfer any inmate to another facility. All open orders shall be subject to review by the commission every 90 days.

History

Renumbered from § 7300.5 adptd. by emergency rulemaking eff. Dec. 19, 2017, expired March 18, 2018; new adopted filed March 27, 2018 eff. April 11, 2018.

Section 7210.6. Procedures

(a) Prior approval of the commission shall precede the transfer of an inmate from one facility to another facility. Whenever a facility administrator determines that it is necessary to transfer an inmate or group of inmates to another suitable place or facility, he shall contact the commission by telephone or other means and request a substitute jail order. When such request is made at a time other than during the normal business hours of the commission, it shall be referred to the officer of the day assigned by the commission.

(b) It shall be the responsibility of the administrator of an affected facility to identify another facility or a suitable place within the county which may be designated as a substitute jail for such facility. If such suitable place exists, he shall communicate its existence to the commission.

(c) If there is no suitable place in the county to which the inmate or group of inmates may be transferred, the facility administrator shall determine whether the county jail of another county is able to accommodate the inmate or group of inmates. The facility administrator shall take into account such factors as the ability of the county jail of another county to house the inmate or group of inmates in a manner consistent with applicable standards, the proximity of such county jail to the county jail or his county, the potential inconvenience to the family and friends of the inmate whose transfer is contemplated, access to legal counsel and other resources, and the ability of the receiving suitable place or facility to provide proper security and supervision of the inmates.

(d) The facility administrator shall provide the commission or its representative with all pertinent information needed to determine whether a substitute jail order should be granted. Upon the commission's approval for transfer and an assurance by the facility administrator of the receiving facility that he will house the inmates, the facility administrator of the sending facility shall make the necessary arrangements to effectuate the transfer.

(e) (1) Whenever due to extraordinary circumstances the facility administrator of a facility reasonably believes that the safety or security of an inmate or group of inmates committed to his custody cannot be maintained and that the public safety and security would be preserved by a transfer of the said inmate or group of inmates to an institution, the facility administrator shall make a written request to the commissioner to make available an institution for the confinement of such inmate or group of inmates. Upon the written determination of the commissioner that such institution is available for the confinement of such inmate or group of inmates, the facility administrator shall cause the said inmate or group of inmates to be transferred to the custody of the commissioner. The facility administrator shall provide immediate written notification to the commissioner of the transfer of the said inmate or group of inmates. The commissioner shall immediately forward to the commission a copy of the written transfer request and other papers upon which his determination was made, along with a copy of his written determination.

(2) The commissioner shall take custody of any inmate transferred pursuant to this Part and shall house such inmates in the most proximate available institution, taking into account the security needs of the inmates and of the community. The legal custody of the said inmates shall remain with the facility administrator.

(3) The facility administrator shall assess the conditions of his facility and immediately request the commissioner to return the inmates to the sending facility once the facility is able to accommodate the inmates and their confinement in an institution is no longer needed. If the facility administrator determines that his facility is inappropriate for the return of the transferred inmates, he shall make every effort to find another suitable facility for the confinement of the said inmates. If such facility is available, he shall request the commission to designate it as a substitute jail, and the commission shall

make the appropriate designation. If no suitable facility is available, the facility administrator shall notify the commissioner of this fact in writing within 30 days of the transfer of the inmate or group of inmates to his custody and shall request the commissioner to extend the transfer for an additional 30 days. The commissioner, in his discretion, shall consent in writing to the extension. If consent to the extension is granted, the commissioner shall send the request for such extension and his written consent to the commission. The commission shall approve such application if it is satisfied that a suitable facility is not available. Such application for extension may be made and approved at 30-day intervals thereafter until the said inmates are either transferred to a suitable facility or are released from the custody of the facility administrator of the sending facility.

History

Renumbered from § 7300.6 adptd. by emergency rulemaking eff. Dec. 19, 2017, expired March 18, 2018; new adopted filed March 27, 2018 eff. April 11, 2018.

Section 7210.7. Records to accompany inmates

Whenever an inmate is transferred pursuant to this Part, the facility administrator of the sending facility shall deliver to the receiving facility or institution a copy of the inmate's commitment papers, a medical summary if one is available, a written notification of the reason for transfer, and any other information pertaining to the inmate which will be helpful to the receiving facility or institution in providing housing and treatment for the inmate.

History

Renumbered from § 7300.7 adptd. by emergency rulemaking eff. Dec. 19, 2017, expired March 18, 2018; new adopted filed March 27, 2018 eff. April 11, 2018.

Section 7210.8. Notification to inmates

After the transfer of an inmate pursuant to this Part, the facility administrator of the receiving facility shall provide him immediately with a written notification of the reasons for his transfer.

History

Renumbered from § 7300.8 adptd. by emergency rulemaking eff. Dec. 19, 2017, expired March 18, 2018; new adopted filed March 27, 2018 eff. April 11, 2018.

Section 7210.9. Rights of transferred inmates

Any inmate transferred pursuant to this Part shall be entitled to all the rights and privileges available to other inmates of the receiving facility; provided that the rights and privileges available to an inmate transferred to an institution shall be subject to the reasonable rules and regulations of the commissioner.

History

Renumbered from § 7300.9 adptd. by emergency rulemaking eff. Dec. 19, 2017, expired March 18, 2018; new adopted filed March 27, 2018 eff. April 11, 2018.

Section 7210.10. Revocation

The commission may, at any time, revoke a substitute jail order upon a determination that the transfer of inmates to a suitable place or another facility is no longer appropriate or necessary. Upon revocation of such order, the commission shall promptly notify the facility administrator of the sending and receiving facilities of its decision to revoke the order stating its reasons therefor, and shall cause to be filed with the county clerks of the respective counties an order of revocation.

History

Renumbered from § 7300.10 adptd. by emergency rulemaking eff. Dec. 19, 2017, expired March 18, 2018; new adopted filed March 27, 2018 eff. April 11, 2018.