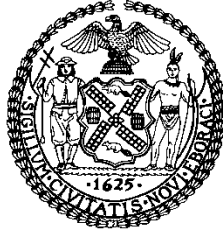


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THE COUNCIL OF THE CITY OF NEW YORK

COMMITTEE REPORT OF THE JUSTICE DIVISION

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COMMITTEE ON CRIMINAL JUSTICE

Hon. Keith Powers, Chair

June 13, 2019

- Prop. Int. No. 1340-A:** By Council Members Ayala, Powers and Rivera
- Title:** A Local Law to amend the administrative code of the city of New York, in relation to the grievance process for incarcerated individuals
- Administrative Code:** Amends Section 9-136
- Proposed Int. No. 1370-A** By Council Member Powers
- Title:** A Local Law to amend the New York City charter, in relation to 311 complaints from incarcerated individuals and informing incarcerated individuals of the protections against retaliation for filing a grievance
- Administrative Code:** Amends Sections 9-136 and 139
- Prop. Int. No. 1334-A:** By Council Members Ampry-Samuel, Rosenthal, Rivera, and

Dromm

Title: A Local Law to amend the New York City charter, in relation to requiring the board of correction to report on the department of correction's grievance process

Administrative Code: Adds Section 626

Prop. Int. No. 1236-A: By Council Members Powers, Rivera, Ayala, Ampry-Samuel, Salamanca, Lander, Rosenthal and Kallos

Title: A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of correction to report on information regarding sick call and clinic production and share such information with correctional health services, and to repeal section 9-108 of the administrative code of the city of New York, relating to health services for incarcerated individuals

Administrative Code: Amends Section 9-108

I. INTRODUCTION:

On June 13, 2019 the Committee on Criminal Justice, chaired by Council Member Keith Powers, will vote on Proposed Int. No. 1340-A, Proposed Int. No 1370-A, Proposed Int. 1334-A, and Proposed Int. 1236-A. The Committee previously held hearings on Int.'s 1340, 1370 and 1334 on November 15, 2019 and on Int. 1236 on November 15, 2019 at which it received testimony from representatives of the Department of Correction (DOC) and Correctional Health Services (CHS), as well as advocates and other interested members of the public.

II. BACKGROUND

In a report released in June 2018, the Board of Correction (BOC) analyzed a wide range of data and identified a number of issues with the Department of Correction's (DOC) grievance

process used for incarcerated individuals to file complaints about the conditions of their incarceration. Based in part on that report, advocates and elected officials, including the Legal Aid Society (LAS) and the New York City Council’s Progressive Caucus, expressed concerns with various aspects of the grievance process. These concerns include ability to access and understand the grievance process, poor timeliness of responses to complaints, and inefficiency of appeals.

Access to and quality of medical care in city jails has long been a concern of the Council, the BOC and advocates. In June 2015, Mayor Bill de Blasio announced that the management and administration of CHS would be transferred from Corizon, Inc. and Damian Family Care Centers, Inc. – private contractors – to H+H – a City public benefit corporation.¹ However, concerns have continued in recent years. At a BOC meeting in March 2016, advocates from the Prisoner’s Rights Project and the Urban Justice Center noted that medical services were often not delivered in a timely fashion, if at all.² Both the DOC and H+H reported a lack of knowledge as to the high number of no-shows for medical appointments; for example, it is unclear whether the no-shows resulted from lack of escorts, lock-downs, refusals, or understaffing.³

III. PROPOSED INT. NO. 1340-A

This law aims to make the grievance process more efficient by requiring the DOC to create a central system where it can track all complaints and give regular access to the Board. Section 1 of the bill amends section 9-136 of the administrative code to require the department to create an integrated electronic grievance tracking system, expands reporting requirements, and requires at least one grievance box to be placed in each jail facility. It requires the department to set caseload

¹

² <https://www.youtube.com/watch?v=XSM53rNG928&feature=youtu.be&t=4262>

³ New York City Board of Correction, Public Meeting Minutes, March 8, 2016.

guidelines for grievance coordinators and to install electronic complaint kiosks in each jail facility by 2026. Section 2 makes the bill effective 6 months after it becomes law.

IV. AMENDMENTS TO INT. NO. 1340

Since introduction, the bill has been amended to align terminology more closely with DOC procedures as laid out in its updated grievance directive. Additionally, the bill has been amended to create electronic kiosks in the year 2026 to align with the anticipated closure of Rikers Island.

V. PROPOSED INT. NO. 1370-A

This bill is designed to centralize the grievance process. Section 1 of the bill amends section 9-136 of the administrative code to require that all complaints made through 311 be addressed by a central Office of Constituent and Grievance Services. Section 2 amends section 9-139 to require that the department inform every incarcerated individual in writing about the grievance process and about protections against retaliation. Section 3 makes the law effective 6 months after becoming law.

VI. AMENDMENTS TO INT. NO 1370-A

Since introduction, this bill has been amended to align terminology more closely with DOC procedures as laid out in its updated grievance directive. In addition, it excludes a previous provision that mandates correctional health services to provide each person who has filed a complaint with an acknowledgment of receipt.

V. PROPOSED INT. NO 1334-A

Introduction 1334-A will require the BOC to issue a report on issues related to the department's grievance process. Section 1 of the legislation amends section 626 of the charter to require the Board to issue such a report every three years. This report will incorporate direct feedback from incarcerated individuals and proposed recommendations for relevant improvements. The bill

requires the report to include a section of recommendations on how to improve the grievance process for vulnerable populations, including incarcerated individuals who are lesbian, gay, bisexual, transgender, intersex, and gender nonconforming. Section 2 allows the Board to conduct hearings, make recommendations, and submit reports of its findings to the appropriate authorities. Section 3 provides the bill will take effect 6 months after becoming law.

VI. AMENDMENTS TO 1334-A

The bill has been amended to eliminate the requirement that the BOC conduct a survey of incarcerated individuals regarding the correctional system's grievance process.

VII. PROPOSED INT. 1236-A

Introduction 1236-A will improve transparency regarding sick call and medical appointments. Section 1 of the bill will replace the current section 9-108 of the administrative code and create a new section requiring the DOC to track data pertaining to clinical production in greater detail, and to share such information with the BOC and CHS. Additionally, the bill requires CHS to provide recommendations to the DOC regarding appointment-scheduling. It will also require the DOC to retain all records having to do with sick call for the BOC's review, and would codify BOC requirements to make sick call available 5 days per week, excluding holidays. Section 2 mandates the bill take effect 365 days after becoming law.

VIII. AMENDMENTS TO INT. 1236

Introduction 1236-A has been amended to exclude provisions that required CHS to publicly report individual-level data regarding sick call. It also includes additional reporting requirements for scheduled medical appointments.

Int. No. 1340-A

By Council Members Ayala, Powers, and Rivera

A Local Law to amend the administrative code of the city of New York, in relation to the grievance process for incarcerated individuals

Be it enacted by the Council as follows:

Section 1. Section 9-136 of the administrative code of the city of New York, as added by local law number 87 for the year 2015, is amended to read as follows:

§ 9-136 Grievance [statistics] process

a. Definitions. For the purposes of this section, the following terms have the following meanings:

Appeal. The term “appeal” means the action taken when an incarcerated individual’s grievance is escalated to a higher level within the grievance process to review decisions regarding resolutions of grievances by incarcerated individuals.

[Grievance. The term "grievance" means a written complaint submitted by an inmate in the custody of the department about an issue, condition, practice or action relating to the inmate's confinement that is subject to the inmate grievance and request program or any successor program.]

Grievable complaint. The term “grievable complaint” means a complaint handled by the office of constituent and grievance services. The term includes but is not limited to a complaint regarding classification, clothing, commissary, correspondence, employment, environmental, food, inmate account, housing, length of sentence, laundry, law library, medical, mental health, personal hygiene, phone, programs, property, recreation, religion, rules and regulations, school, search, social service, transportation, and visits.

Non-grievable complaint. The term “non-grievable complaint” means any complaint which is not handled by the office of constituent and grievance services, including but not limited to a complaint regarding an allegation of assault, sexual assault/abuse, and verbal misconduct from a staff member; an allegation of assault, sexual assault/abuse, and non-sexual harassment from another incarcerated individual; individual security status; medical and mental health staff; request for accommodation due to a disability or claim of discrimination based on disability or perceived disability; request for protective custody; freedom of information laws, housing, and the grievance process.

Office of constituent and grievance services. The "office of constituent and grievance services" means the unit within the department that facilitates a formal process established by the department that provides incarcerated individuals with the opportunity to resolve grievable complaints regarding their confinement.

b. Forty-five days after the quarter beginning January 1, 2016, and no later than the forty-fifth day after the end of each subsequent quarter, the commissioner shall post on the department website a report containing the following information for the preceding quarter, in addition to all information in paragraphs 1 through 5 of section d in the aggregate

1. The number of [grievances] grievable and non-grievable complaints submitted in all departmental facilities, in total and disaggregated by the facility and housing area type in which such grievance was submitted.

2. The number of [grievances] grievable and non-grievable complaints submitted in all departmental facilities, disaggregated by grievance category, by the facility and housing area type in which such grievance was submitted, and by the method by which such grievance was submitted.

3. The number of [grievances,] grievable complaints, the stages of the grievance process, the stage in the grievance process at which they were resolved, and the categories for which any grievances were dismissed.

4. For non-grievable complaints, where such complaints were referred;

5. The number of [inmates] incarcerated individuals that submitted grievances.

c. The department shall utilize an electronic tracking system to record all grievable and non-grievable complaints handled by the office of constituent and grievance services and shall provide the board of correction access to such system. Such system shall track the following:

1. Whether a complaint is subject to the process established by the office of constituent and grievance services, and if not, if and where the incarcerated individual was directed;

2. Whether the incarcerated individual pursued an appeal;

3. How and when the complaint was resolved, and at what stage the complaint was resolved;

4. Whether the complaint was made by the affected incarcerated person, an attorney or other advocate, a public official, or another third party;

5. The housing facility and housing area type where the complaint was made;

d. The department shall ensure equal access to the office of constituent and grievance services, including the following procedures:

1. Evaluating the need for grievance boxes and strategically placing a number of boxes in locations where individuals in department custody frequently congregate, and at least one box in each facility.

2. Placing a number of dedicated personnel in each housing unit to conduct outreach.

3. Developing caseload guidelines for grievance coordinators and officers.

e. The department shall install grievance kiosks in each facility where incarcerated individuals may file grievances electronically by January 2026. Such kiosks shall be accessible in multiple languages and shall provide incarcerated individuals physical receipts confirming filing. If a request made through the kiosk is not subject to the inmate grievance and review process, the kiosks shall provide incarcerated individuals with information regarding where the grievance should be redirected.

f. Incarcerated individuals unable to read, access, or understand the grievance process shall be provided with assistance necessary to meaningfully engage in such process.

§ 2. This local law takes effect 6 months after it becomes law.

AS/JK/MKW
LS #7232/7320/7322/7323
5/21/19

Int. No. 1370-A

By Council Member Powers

A Local Law to amend the administrative code of the city of New York, in relation to 311 complaints made by incarcerated individuals and informing incarcerated individuals of the protections against retaliation for filing a grievance

Be it enacted by the Council as follows:

Section 1. Section 9-136 of the administrative code of the city of New York is amended by adding a new subdivision g to read as follows:

g. Complaints and requests made by or on behalf of an incarcerated individual to 311 and forwarded to the department shall be addressed by the office of constituent and grievance services.

§ 2. Section 9-139 of the administrative code of the city of New York is amended by adding new subdivisions g and h to read as follows:

g. The department shall inform all incarcerated individuals in writing, using plain and simple language, of the protections against retaliation for filing a grievance, complaint, or request. The department shall also inform all incarcerated individuals in writing and in plain and simple language upon the filing of a grievance, complaint, or request, about which complaints are not subject to the grievance process; the process for resolving such complaints; and the protections against retaliation for filing such grievance, complaint, or request. Grievable complaints made through 311, to the board of correction, by email, by attorneys or other advocates, public officials, or other third parties on behalf of an incarcerated individual and over the phone shall be addressed by the office of constituent and grievance services.

h. The department shall include on all grievance forms instructions on how to appeal resolutions and post such forms on the department's website.

§ 3. This local law takes effect on the same date that a local law for the year 2019 amending the administrative code of the city of New York, relating to the grievance process for incarcerated individuals, takes effect.

AM/AS
LS #7232/7458/7314/7315/7319
3/26/2019

Int. No. 1334-A

By Council Members Ampry-Samuel, Rosenthal, Rivera, and Dromm

A Local Law to amend the New York city charter, in relation to requiring the board of correction to report on the department of correction's grievance process

Be it enacted by the Council as follows:

1 Section 1. Subdivision f of section 626 of the New York city charter, as amended by local
2 law number 102 for the year 1977, is amended to read as follows:

3 f. The board shall establish procedures for the hearing of grievances, complaints or
4 requests for assistance (1) by or on behalf of any person held or confined under the jurisdiction of
5 the department or (2) by any employee of the department. [The board, or by written designation, a
6 member of the board or the executive director, may conduct hearings, or study or investigate any
7 matter within the jurisdiction of the department, and the board may make recommendations and
8 submit reports of its findings to the appropriate authorities.] Starting July 1, 2021, the board shall
9 issue a report, at least every three years, on issues related to the department's grievance process.
10 Such report shall incorporate direct feedback from incarcerated individuals and proposed
11 recommendations for relevant improvements, and shall include a section of recommendations on
12 how to improve the grievance process for vulnerable populations, including incarcerated
13 individuals who are lesbian, gay, bisexual, transgender, intersex, and gender nonconforming. Such
14 report shall be submitted to the council and posted on the board's website.

15 § 2. Section 626 of the New York city charter is amended by adding a new subdivision h
16 to read as follows:

17 h. The board, or by written designation, a member of the board or the executive director,
18 may conduct hearings, or study or investigate any matter within the jurisdiction of the department.

1 and the board may make recommendations and submit reports of its findings to the appropriate
2 authorities.

3 § 3. This local law takes effect on the same date that a local law amending the
4 administrative code of the city of New York, relating to requiring the department of correction to
5 make the grievance process more efficient, as proposed in introduction number 1340 for the year
6 2019, takes effect.

7
MKW/AS
LS #7318
4/26/2019

Proposed Int. No. 1236-A

By Council Members Powers, Rivera, Ayala, Ampry-Samuel, Salamanca, Lander, Rosenthal and Kallos

A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of correction to report on information regarding sick call and clinic production and share such information with correctional health services, and to repeal section 9-108 of the administrative code of the city of New York, relating to health services for incarcerated individuals

Be it enacted by the Council as follows:

Section 1. Section 9-108 of the administrative code of the city of New York is REPEALED and a new section 9-108 is added to read as follows:

§ 9-108 Sick call and clinic production. a. Definitions. For purposes of this section, the following terms have the following meanings:

Clinic production. The term “clinic production” means the department’s process by which an incarcerated individual is escorted for a medical appointment.

Correctional health services. The term “correctional health services” means any health care entity designated by the city of New York as the agency or agencies responsible for health services for incarcerated individuals in the care and custody of the department. When the responsibility is contractually shared with an outside provider this term shall also apply.

Health care professional. The term “health care professional” means a person who meets qualifications stipulated by their profession and who possesses all credentials and licenses required by New York state law.

Medical appointment. The term “medical appointment” means any patient encounter requested by correctional health services.

Non-production. The term “non-production” means an instance where an incarcerated individual is not escorted for a medical appointment requested by correctional health services.

Production refusal. The term “production refusal” means a refusal by an incarcerated individual to allow the department to produce such incarcerated individual to clinic for a medical appointment. Nothing in this definition, or in this section, is intended to contradict rules governing treatment set forth in chapter 3 of title 40 of the rules of the city of New York.

Sick call. The term “sick call” means the department’s process by which an incarcerated individual requests to be seen by a health care professional for the purpose of assessing or treating such incarcerated individual’s non-emergency medical complaint.

Walk-out. The term “walk-out” means an instance when an incarcerated individual leaves clinic without being seen by a health care professional for a medical appointment.

b. The department shall retain all documents containing data relating to sick call and clinical production, including handwritten sign-up sheets, for at least three years from the time an incarcerated individual is released from custody of the department, and provide such documents to the board of correction upon request.

c. The department shall provide all housing units with access to sick call on weekdays, excluding holidays, and subject to the exclusions set forth in chapter 3 of title 40 of the rules of the city of New York, or exclusions obtained through a variance pursuant to section 3-13 of such rules.

d. Where individuals are not produced for medical appointments, department personnel shall record the facility, along with the reason for non-production, including but not limited to: “court”, “visits”, “production refusal”, “walkout”, “programming”, “barbershop,” “recreation,” and “other”. For the category, “other,” department personnel shall provide a brief narrative. If the reason for non-production is a refusal or walkout, the department will also record the reason for refusal or walkout, if given. The department shall make such records legible and available to the

board of correction at any time. On a monthly basis, the department shall publish an aggregate report on non-production on its website and submit such a report to correctional health services and the city council. This report shall also contain an aggregate count of reasons for production refusal or walkout, if given, and the facility.

e. Where individuals are not produced to a health care professional for a medical appointment, correctional health services will provide to the department the names of such individuals and a specified time-frame of when they should be produced as deemed clinically appropriate. When individuals are not produced within the specified time-frame, correctional health services shall notify the facility's commanding officer, along with a production recommendation based on correctional health's clinical expertise.

§2. This local law takes effect 365 days after it becomes law.

AS
LS 8088, 8999
6/5/2019