

To be argued by  
JONATHAN I. EDELSTEIN  
Time Requested: 15 Minutes

Docket No. APL-2018-00172

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## NEW YORK STATE COURT OF APPEALS

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In the Matter of the Application of PATRICIA WALSH,

Petitioner-Appellant,

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules

- against -

THE NEW YORK STATE COMPTROLLER and THE NEW YORK  
STATE AND LOCAL EMPLOYEES' RETIREMENT SYSTEM,

Respondents.

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### **BRIEF FOR PETITIONER-APPELLANT**

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## PRELIMINARY STATEMENT

Petitioner-Appellant PATRICIA WALSH appeals by permission, pursuant to CPLR § 5602(a), from an order of the Appellate Division, Third Department dated May 31, 2018 and served by first-class mail with notice of entry on June 4, 2018, which confirmed respondents' administrative determination denying Section 607-c Disability Retirement Benefits to petitioner.

This Court has jurisdiction to entertain this appeal because the order of the Appellate Division from which this appeal was taken finally determined the instant action. See N.Y. Const. art. VI, § 3(b)(4); CPLR § 5602(a)(1)(i). The questions presented for review herein were preserved by argument in the Verified Petition (R13-18) and in the petitioner-appellant's memorandum of law to the administrative agency (R24-27).<sup>1</sup>

There is no related litigation pending in this or any other Court.

## QUESTIONS PRESENTED

1. Did the Appellate Division, Third Department, err in finding that an "act of an inmate" for purposes of Section 607-c(a) of the Retirement and Social Security Law must be "volitional or disobedient?"

2. Did the Third Department err in finding that an inmate's voluntary intoxication is a factor counting against, rather than in favor of, petitioner's injury

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<sup>1</sup> Citations to "R" refer to the record on appeal submitted herewith.



resulting from an “act of an inmate” under R&SSL § 607-c?

3. When an intoxicated inmate falls while attempting to exit a "high risk van" at the direct order of a correction officer and the officer is injured, does that injury result from an act of an inmate within the meaning of Section 607-c?

Defendant submits that the answer to each of these questions is “yes.”

### **SUMMARY OF THE ARGUMENT**

Petitioner Patricia Walsh, a Nassau County correction officer, suffered disabling injuries while assigned to transport high-risk inmates from the courthouse to the county jail. At the time she was injured, she had picked up Caitlin Trettien, an intoxicated inmate who was acting out in the courthouse, and transported Ms. Trettien to the jail yard in the “high-risk van.” The entrance/exit door to the inmate compartment of the high-risk van is located several feet off the ground and, in order to exit, Ms. Trettien had to take two steep steps down. Officer Walsh opened the door and ordered Ms. Trettien to exit the van, and Ms. Trettien attempted to do so, but as might be expected given her intoxicated and handcuffed condition, she took one and a half steps, fell, and injured Ms. Walsh who was trying to stop her fall.

Ms. Walsh sought disability retirement benefits under Section 607-c of the Retirement and Social Security Law, which provides a pension to county correction officers who become disabled due to “any act of any inmate.” The

Third Department, however, found that because Ms. Trettien’s attempt to exit the van was not “volitional or disobedient” – a threshold that it began applying only in this case and a related case involving the same van – then Ms. Walsh’s injuries did not result from an “act” within the meaning of the statute. Moreover, the Third Department treated Ms. Trettien’s intoxication as a factor that made her conduct less “volitional” and therefore outside the scope of the statutory benefits.

As discussed in detail below, petitioner submits that this holding was in error for several reasons. First, the plain language of the statute applies to injuries caused by “*any* act of *any* inmate” (emphasis added), and the recognized rules of statutory construction in New York hold that general language such as “any” must be construed broadly and given its full meaning. The same rules of construction dictate that where, as here, the Legislature did not expressly limit the scope of the word “any,” the courts and administrative bodies should refrain from imposing agency-made or judge-made restrictions such as those imposed here.

Second, the Appellate Division’s interpretation of “act of an inmate” relies upon an excessively narrow view of the legislative history. The Third Department fastened upon the words “dangerous and profoundly antisocial” in the Governor’s approval memorandum to hold that only disobedient or unruly acts should count, but ignored language elsewhere in the same memorandum and other legislative materials which point to a much broader statutory purpose. Indeed, at least one of

the legislative materials explicitly includes “transporting” inmates as a danger faced by correction officers, indicating that acts performed by inmates during the course of being transported should qualify for Section 607-c benefits if such acts result in a correction officer suffering disabling injury.

Third, even if this Court were to treat the “dangerous and antisocial” language as an expression of intent to limit the statute’s scope – which it was not – the “dangerous and antisocial” nature of inmates is precisely why they must be transported securely and why vehicles such as the high-risk van exist. Moreover, the features of secure transportation, such as inmates being handcuffed and the exit door of the van being several feet off the ground in order to make it more escape-proof, also exist to control inmates’ “dangerous and antisocial” tendencies.

Thus, where, as here, the dangers of an inmate’s act in attempting to exit the high-risk van were accentuated by the correctional setting, the consequences of such act are well within the purpose of the statute. This is especially true since the duties of correction officers are “care, custody and control,” and that Ms. Walsh’s injury, which resulted when she attempted to break Ms. Trettien’s fall even at the risk of being hurt herself, implicates both custody and care. Where a correction officer’s response to an inmate’s act – in this case, attempting to exit a high-risk van – forces her to risk disabling injury as a matter of duty, then she should be protected by the statute when such risk comes to pass.

Finally, petitioner submits that the Third Department's characterization of inmate Trettien's intoxication as a mitigating factor was an erroneous and indeed dangerous precedent. Intoxicated inmates are precisely those who are most antisocial and dangerous to correction officers, which means that if the decision in this case is allowed to stand – if the precise factor that makes inmates more dangerous is treated as making their acts less “volitional” – then correction officers will be deprived of Section 607-c's protection when they need it most.

Therefore, petitioner submits that the Third Department's judge-made restriction of Section 607-c to “volitional or disobedient” acts is supported by neither the plain language of the statute, the totality of its legislative history, or its remedial purpose. Indeed, even if this Court were to accept that erroneous limitation – which it should not – the Third Department's holding fails even on its own terms given that the injury resulted from Ms. Trettien's attempt to obey Ms. Walsh's command and her taking of one and a half steps, neither of which can be characterized as anything other than “volitional.” This Court should accordingly reverse the Third Department's decision, annul respondents' determination as to Ms. Walsh, and direct that petitioner be awarded Section 607-a benefits.

### **STATEMENT OF FACTS**

The facts of this case are undisputed. At the administrative hearing, petitioner-appellant Walsh testified that, on March 19, 2012, she was a correction

corporal in Nassau County. (R80). She and Officer Cocchiola were sent to pick up a female inmate (later identified as Caitlin Trettien) who was causing a problem in arraignment court. (R81). She went to the courthouse and learned that Ms. Trettien appeared to be intoxicated or high on drugs. (R81-82). She then escorted Ms. Trettien to the van, noting that Ms. Trettien was unsteady and needed help walking. (R82). At this time Ms. Trettien was handcuffed in the front. (R83).

Ms. Walsh described the van as opening in the back and having two steps up to the entrance, one of which was an extension off the bumper and then another step. (R82, 87). After getting Ms. Trettien into the van, she drove back to the Nassau County Jail. (R83). She opened the back door and instructed Ms. Trettien to exit the van. (R84). Again, she noted that Ms. Trettien was intoxicated or under the influence of drugs. (R84).

Ms. Trettien was standing on the right side from the point of view of a person facing the van, and Ms. Walsh was standing directly in front of her. (R87).

At that point, Ms. Trettien took approximately two steps and “took a header out of the van” due to her intoxicated state. (R84, 88). Ms. Walsh put out her left arm to try to prevent Ms. Trettien from falling, “at which point we both went down onto the pavement and she landed on top of me.” (R84). Ms. Walsh took this action pursuant to her job duty to protect falling inmates even at the risk of injury to herself. (R84-85).

The inmate did not punch or kick Ms. Walsh. (R88-89).

As a result of this incident, Ms. Walsh suffered *inter alia* a torn rotator cuff and cervical spine injury which required four-level fusion surgery. (R85). She is on the disabled list (R85-86), as corroborated by a medical report prepared by the Nassau Sheriff's Department Chief Surgeon's Office (R115-16).

Officer Cocchiola gave testimony corroborating Ms. Walsh's account. He testified that on the date in question, he was working in the transportation section of the jail and that he and Ms. Walsh were sent to pick up an inmate who was being unruly in court. (R71-72). He observed the prisoner "barely standing," like she was "intoxicated or high on drugs." (R73). The inmate was "fairly big," weighing 190 to 200 pounds. (R73).

Both officers helped the inmate, Ms. Trettien, into the van and drove back to the main yard of the jail. (R73-74). The officers opened the back of the van, whereupon Ms. Trettien fell right on top of Ms. Walsh. (R74). The inmate had had difficulty getting up before taking a step out of the van. (R75) She was "a little out of it." (R78). She took one and a half steps before falling. (R78).

Officer Cocchiola confirmed that it is required for a correction officer to put her body in the way of a falling inmate. (R76).

A number of contemporaneous incident reports were prepared after the accident, both by Ms. Walsh and other officers. (R99-114). These reports

corroborate the testimony of petitioner Walsh and Officer Cocchiola in every respect. Notably, the reports specifically note that Ms. Trettien was under the influence of drugs or alcohol (R106), meaning that this intoxication was observed contemporaneously. This fact was pointed out by petitioner's counsel at the hearing. (R90). The same report indicated that Ms. Trettien "lunged" forward while stepping out of the van. (R106).

Thereafter, petitioner applied for Section 607-C Performance of Duty Retirement Benefits, again noting that an intoxicated inmate fell on her. (R94-95). On December 24, 2015, respondents denied the benefit application on the basis that "the alleged cause of disability on 03/19/2012 was not the result of an act of any inmate." (R96). Petitioner timely sought a redetermination, resulting in a hearing being held before JHO Arthur Cooperman on September 15, 2016 in which testimony was given as aforesaid and the relevant incident reports and other documents were placed in evidence. (R62-93).

After the hearing, petitioner and respondent submitted memoranda of law. Petitioner contended that her injury resulted from the inmate's acts of getting drunk or high and stepping out of the van, noting that under applicable case law, the inmate need not intend to cause injury. (R27-28). In particular, Ms. Walsh argued that under DeMaio v. DiNapoli, 137 A.D.3d 1545 (3d Dept. 2016), an act of an inmate need not be intentional in order to qualify an officer injured by such

act for disability retirement benefits. (R26).

Respondents, in contrast, argued that the instant case was similar to Kaler v. DiNapoli, 86 A.D.3d 898 (3d Dept. 2011), in which a correction officer slipped on a floor that inmates had mopped some time before, and Laurino v. DiNapoli, 132 A.D.3d 1057 (3d Dept. 2015), in which an inmate went limp during a seizure and injured a correction officer. (R32-35).

On December 1, 2016, JHO Arthur Cooperman issued a decision on Ms. Walsh's application. (R37-42). In pertinent part, JHO Cooperman found that the Laurino decision was controlling and mandated denial of benefits. (R40). Notably, the JHO made no attempt to differentiate the DeMaio case. (R40). On this basis, JHO Cooperman found that petitioner Walsh had not sustained her burden of proving that she was injured as the result of an act of an inmate. (R40).

By decision dated January 8, 2017, the Comptroller adopted JHO Cooperman's decision and denied Section 607-C benefits to Ms. Walsh. (R44-45). The Comptroller's decision additionally differentiated DeMaio, supra, on the ground that inmate Trettien's act in this case was allegedly "involuntary." (R45).

The January 8, 2017 decision exhausted Ms. Walsh's administrative remedies, and accordingly, she timely sought Article 78 relief in the Albany County Supreme Court (R7-22), to which respondents interposed an answer (R.54-58). On June 2, 2017, the Supreme Court transferred the petition to the Appellate



Division, Third Department, pursuant to CPLR § 7804(g). (R121-23). Both parties thereafter filed briefs in the Appellate Division.

On May 31, 2018, the Third Department issued a Memorandum and Judgment confirming the respondents' determination. (R3-6). In pertinent part, the court stated:

Petitioner, as the applicant, bore the burden of demonstrating that her alleged incapacity was the natural and proximate result of any act of any inmate. The phrase any act of any inmate is not statutorily defined... but we have interpreted this language to require a showing that the claimed injuries were caused by direct interaction with an inmate and, further, were caused by some affirmative act on the part of the inmate. An "affirmative act" need not be intentionally aimed at the officer, *but does need to be volitional or disobedient in a manner that proximately causes his or her injury.*

Here, there is no question that petitioner sustained her claimed injuries when attempting to assist the subject inmate in exiting the transport van, i.e., through direct interaction with an inmate. Petitioner's injuries did not, however, occur contemporaneously with, and flow directly, naturally and proximate from any disobedient and affirmative act on the part of the inmate. *Indeed, by all accounts, the inmate in question could barely walk or stand unassisted*, and the hearing testimony reflects that she simply lost her footing and fell. While petitioner makes much of the fact that her job duties included insuring the subject inmate's safety, the mere fact that petitioner was injured while she was... engaged in providing a service for the benefit of an inmate, is insufficient, without more, to satisfy the statutory standard.

(R4-5) (emphasis added) (citations and internal punctuation omitted).

Of note, the Third Department’s decision in this case came two weeks after its decision in Martin v. Comptroller, 161 A.D.3d 1418 (3d Dept. 2018), which involved another Nassau County correction officer who was injured when a different inmate fell out of the same high-risk van. The Martin decision, too, denied benefits on the basis that there was no “indication that the inmate, upon exiting the van, disobeyed a direct order, failed to comply with any policy or procedure or otherwise engaged in any sort of affirmative act that, in turn, proximately caused petitioner’s injuries.”

The Appellate Division’s decision was served by first-class mail with notice of entry on June 4, 2018. (R2). Petitioner timely moved for leave to appeal to this Court, and by order dated September 18, 2018, this Court granted petitioner’s motion. (R1). Now, for the reasons set forth below, petitioner respectfully submits that this Court should reverse the Third Department’s decision, vacate and annul respondents’ administrative determination, and direct that petitioner be awarded Section 607-c Disability Retirement Benefits.

## POINT I

### **THE TERM “ACT OF AN INMATE” IN SECTION 607-C OF THE RETIREMENT AND SOCIAL SECURITY LAW NEED NOT BE “VOLITIONAL OR DISOBEDIENT” AND INCLUDES THE ACT THAT CAUSED OFFICER WALSH’S INJURY**

This case hinges on a single issue of statutory interpretation: what is the

meaning of “act of an inmate” for purposes of Section 607-c of the Retirement and Social Security Law, and is the judicial gloss that the Third Department has placed on that term unduly restrictive? Petitioner submits that neither the language, legislative history, nor the purpose of the statute supports the Appellate Division’s judge-made limitations.

Section 607-c(a) provides as follows:

Any sheriff, deputy sheriff, undersheriff or correction officer as defined in subdivision a of section sixty-three-b of this chapter, and who are employed in a county which makes an election pursuant to subdivision d of such section sixty-three-b, who becomes physically or mentally incapacitated for the performance of duties as the natural and proximate result of an injury, sustained in the performance or discharge of his or her duties by, or as the natural and proximate result of *any act of any inmate* or any person confined in an institution under the jurisdiction of such county, shall be paid a performance of duty disability retirement allowance equal to that which is provided in section sixty-three of this chapter, subject to the provisions of section sixty-four of this chapter. (Emphasis added).

The language of Section 607-c mirrors that of R&SSL §§ 507-b(a), which was earlier enacted to provide similar benefits to New York State correction officers, and 507-c(a), which was enacted for the benefit of New York City correction officers.

The meaning of “act” is not defined in any of the above statutes and accordingly has been the subject of repeated interpretation by the courts, primarily

the Third Department.<sup>2</sup> As discussed in Point I(A) below, the Third Department has imposed several limitations on what a compensable “act” might mean, including a requirement that there be direct contact between the officer and the inmate and that the inmate must perform an “affirmative” act. In the instant case and in Martin, supra, the Third Department added a new limitation, holding that although inmate acts need not be violent or intentional, they must be “volitional or disobedient.”

The restrictions placed on the meaning of “any act of any inmate” in this case and Martin are unprecedented. Although previous Third Department decisions had *mentioned* that certain acts of inmates were disobedient or violated prison rules, no court prior to Martin and the instant case had suggested that an act *must* be disobedient in order to fall within the scope of the Retirement and Social Security Law. Second, and just as importantly, no decision prior to the decision in this case had ever suggested that an inmate’s voluntary intoxication *detracted* from the compensability of an injury by making the inmate’s resulting acts less

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<sup>2</sup> The Third Department has played a leading role in construing “act of an inmate” because the great majority of Article 78 petitions in which state and local employees challenge disability retirement decisions must be commenced in the County of Albany. See CPLR § 506(b)(2) (requiring that actions against, *inter alia*, the state comptroller be commenced in the Albany County Supreme Court). Some Article 78 challenges by New York City employees are heard by the First and Second Departments, but these courts tend to defer to Third Department precedent. See, e.g., Hernandez v. New York City Empl. Ret. Sys., 148 A.D.3d 706, 707-08 (2d Dept. 2017) (relying on Third Department cases to deny relief to petitioner who was injured while performing service for an inmate).

“volitional.” Petitioner submits that this construction of the statute was error.

**A. The Third Department’s Interpretive History of the Correction Officer Disability Statutes.**

The Third Department did not construe the term “act of an inmate” until well into the history of the relevant statutes. The court’s earliest jurisprudence concerning these statutes related primarily to proximate cause; for instance, it held that a correction officer who stumbled while running with inmates was not injured *as a result of* the act of an inmate, see Dean v. McCall, 270 A.D.2d 625, 625-26 (3d Dept. 2000); that an officer who was hit by a self-closing door while supervising inmates fell outside the statutory scope, see Arcuri v. N.Y. State & Local Ret. Sys., 291 A.D.2d 621, 622-23 (3d Dept. 2002); and that an officer who fell backwards over a food cart was not entitled to R&SSL § 507-b benefits where he could not show that an inmate was involved in placing the cart, see Mruczek v. McCall, 299 A.D.2d 638, 639 (3d Dept. 2002). In addition, the court held that in order to be compensable, “a correction officer’s injuries be caused by direct interaction with an inmate,” i.e., that such interaction result in the act that causes injury. See Escalera v. Hevesi, 9 A.D.3d 666, 667 (3d Dept. 2004).

Thus, the upshot of these holdings was that where a correction officer was injured in the mere presence of inmates, where he or she was providing services for inmates but was not injured as the result of the inmates’ actual conduct, and/or where the link between inmate conduct and the officer’s injury was too attenuated,

the Third Department held that benefits should be denied. See also Egziaco v. Comptroller, 15 A.D.3d 747, 747-48 (3d Dept. 2005) (officer who slipped and fell when carrying inmate records was not entitled to benefits); Wright v. Hevesi, 46 A.D.3d 1184, 1185 (3d Dept. 2007) (connection between inmate act and injury was too attenuated where officer slipped on soapy water that had leaked into area where inmate's property was stored); Davis v. DiNapoli, 56 A.D.3d 933, 934 (3d Dept. 2008) (connection too attenuated where officer injured his neck and back while rising from a chair to answer an inmate-related dispatch call); Palmateer v. DiNapoli, 117 A.D.3d 1228, 1229-30 (3d Dept. 2014) (officer slipped and fell on two occasions while responding to an inmate call for help and what he believed to be an altercation).

Not until 2011, in the case of Kaler v. DiNapoli, 86 A.D.3d 898, 899 (3d Dept. 2011), did the Third Department interpret the term “act” itself. In Kaler, a correction officer slipped and fell after turning a corner and stepping on a wet floor that had recently been mopped by an inmate. This Court looked to the legislative purpose of the statute and found that it “was clearly intended to compensate correction officers who [become disabled] because of the risks created by their daily contact with certain persons who are dangerous and profoundly antisocial.” Id. The court found that “mopping a floor — a benign chore routinely performed in penal institutions by inmates — is clearly not, in and of itself, the type of

activity that was intended to trigger the extra protections afforded correction officers by this statute.” Id.

In subsequent cases involving mopping, cleaning and the like, the Third Department, citing Kaler, similarly held that an “act of an inmate” was not implicated. See, e.g., Perry v. DiNapoli, 88 A.D.3d 1047, 1047-48 (3d Dept. 2011) (mopping); Parish v. DiNapoli, 89 A.D.3d 1315, 1316-17 (3d Dept. 2011) (floor waxing); White v. DiNapoli, 94 A.D.3d 1290 (3d Dept. 2012) (floor stripping)

The next significant “act of an inmate” decision was Naughton v. DiNapoli, 127 A.D.3d 137 (3d Dept. 2015). The Naughton court held that an officer who was injured while putting shackles on an inmate “who just seconds earlier had been taken down to the ground after violently threatening another correction officer” was compensable. Id. at 139. The court found that although the inmate was no longer resisting when Naughton was injured, the passage of mere seconds was not sufficient attenuation to remove the incident from the scope of the statute, and that “the act of restraining a combative and unruly inmate” was the type of activity that was intended to trigger the statute’s protection. Id. at 139-40.

In contrast, in Laurino v. DiNapoli, 132 A.D.3d 1057, 1058 (3d Dept. 2015), the court found that where an officer found an inmate “walking in a daze” and the inmate went limp and fell while the officer and a nurse were “slowly lower[ing] him to the floor,” there was no compensable “act” because the injury resulted from

the inmate's spontaneous medical emergency rather than from anything the inmate did. In support of this holding, the Laurino court cited to Esposito v. Hevesi, 30 A.D.3d 667, 668 (3d Dept. 2006), in which the officer was injured while lifting an inmate who had fallen out of bed and in which the inmate "was deadweight" and did not engage in any act prior to or during being lifted.

In DeMaio v. DiNapoli, 137 A.D.3d 1545 (3d Dept. 2016), the Third Department held that an "act of an inmate" did not have to be violent or intentional. Officer DeMaio was injured when an inmate he was escorting down a flight of stairs "pulled away" from him. There was no indication of whether the pulling-away was intentional on the inmate's part. Nevertheless, the Third Department held that the hearing officer erred in denying Section 607-c benefits on this ground:

Moreover, the Hearing Officer's determination misstated the applicable burden. Here, petitioner was required to establish that he is incapacitated from performing his work-related duties "as the natural and proximate result of an injury, sustained in the performance . . . of his or her duties by, or as the natural and proximate result of any act of any inmate." While we have repeatedly held that the statute requires that the petitioner demonstrate that his or her injuries were "caused by direct interaction with an inmate," and have specified that such injuries must be caused by some "affirmative act on the part of the inmate," there is no legal support for the Hearing Officer's enhancement of such burden by indicating that petitioner was required to demonstrate "an *intentional overt* act of an inmate."



Id. (citations omitted) (emphasis in original). When the DeMaio case came up again after remand, the court found that the injury did in fact result from an act of an inmate. See DeMaio v. DiNapoli, 160 A.D.3d 1276, 1277 (3d Dept. 2018) (finding that “the operative event causing petitioner’s injury was the inmate’s action in trying to break free of [his] hold while descending the stairs”).

Likewise, in Traxler v. DiNapoli, 139 A.D.3d 1314 (3d Dept. 2016), the Third Department held that a correction officer was entitled to benefits where an inmate who disregarded her order to stop and proceeded through a self-closing gate accidentally let go of the gate and caused it to strike and injure her. The court noted that “[a]lthough petitioner did not believe that the inmate intended to injure her and was aware that the self-closing of the gate was a normal and foreseeable result of the process of the unlocking and opening of the gate, the inmate, by disobeying petitioner’s instruction to remain where she was standing, caused the gate to close and strike petitioner at the moment that the inmate released the gate.” Id. at 1315.

Notably, although the Traxler court mentioned that the inmate’s act was disobedient, it did not specify that disobedience was a *requirement* for an “act of an inmate” to be compensable under the Retirement and Social Security Law. Only in the instant case and Martin, supra, did the Third Department hold that a “volitional or disobedient” act was a *sine qua non* of Section 607-c benefits. And

this limiting gloss is supported by neither the language, the history nor the purpose of the statute.

**B. The Statutory Language Supports a Broad Construction.**

It is a “well-established rule of statutory construction” that this Court’s analysis “begin[s]... with the language of the statute.” Beck Chevrolet Co., Inc. v. General Motors, LLC, 27 N.Y.3d 379, 389 (2016). This starting point is “guided by the principle that the text of a provision is the clearest indicator of legislative intent and courts should construe unambiguous language to give effect to its plain meaning.” Id. at 390; DaimlerChrysler Corp. v. Spitzer, 7 N.Y.3d 653, 660 (2006).

The statutory language at issue in this case provides that disability retirement benefits are available to any correction officer injured as the result of “*any* act of any inmate.” R&SSL § 607-c(a) (emphasis added). The word “any” imports a broad construction rather than one that is restricted to violent acts or even to “volitional or disobedient” ones.

“[S]tatutory language is generally construed according to its natural and most obvious sense, without resorting to an artificial or forced construction.” McKinney’s Cons. Laws of New York, Statutes (“McKinney’s Statutes”) § 94.

Moreover, “[i]f there is nothing to indicate a contrary intent on the part of the lawmakers, terms of general import in a statute ordinarily are to receive their full significance.” Id., § 114; see also Matter of Greenberg, 70 N.Y.2d 573, 577 (1987)

(citing McKinney's Statutes §§ 94 and 114).

This Court, citing the McKinney's commentary, has repeatedly given a broad construction to statutes containing the word "any." In Jensen v. General Elec. Co., 82 N.Y.2d 77 (1993), for instance, this Court construed CPLR § 214-c, which in pertinent part established a "discovery rule" with respect to the statute of limitations for injuries resulting from "the latent effects of exposure to any substance or combination of substances, in any form." General Electric contended that because Section 214-c did not explicitly include continuing wrongs, the statute did not encompass them. This Court, however, rejected that argument:

[The Legislature] expressed no exception or qualification for continuing wrongs because none was necessary or intended. To have done so might also have required a fuller list to avoid the statutory construction maxim that the inclusion of one item is the exclusion of others. We therefore respectfully disagree with the dissent that the Legislature's failure to explicitly recite continuing wrongs as within the general language of this statute is somehow fatal to the general sweep of the enactment.

Id. at 86. Moreover, in language particularly pertinent here, this Court stated that while "[a] general law may, and frequently does, originate in some particular case or class of cases which is in the mind of the legislature at the time," the courts "cannot, in the absence of *express restrictions*, limit its application to those cases, but must apply it to all cases that come within its terms and its *general* purpose and policy." Id. (emphasis added), quoting Matter of DiBrizzi, 303 N.Y. 206, 214

(1951); see also Hahn v. Hagar, 153 A.D.3d 105 (2d Dept. 2017) (“Ordinarily, where the Legislature in enacting a statute utilized general terms, and did not, either expressly or by implication, limit their operation, the court will not impose any limitation”).

Likewise, in Bath & Hammondsport R.R. Co. v. N.Y.S Dep’t of Env. Cons., 73 N.Y.2d 434, 437-38 (1989), this Court, citing sections 94 and 114 of McKinney’s Statutes, held that the statutory provision in question “literally authorizes the Commissioner to acquire ‘any’ land for ‘any’ departmental purpose or function.” Thus, “[g]iving the statutory language its natural and obvious meaning and *the unqualified word ‘any’* its full significance as a general term,” this Court held that the statute was “a general authorization to employ eminent domain within the full scope of the Department’s responsibilities.” Id. at 438 (emphasis added).

In other words, “the absence of an exclusion in [a general] statute... creates a presumption that the Legislature intended that [all cases within its terms] be included in the statutory scheme.” Buffalo Columbus Hosp. v. Axelrod, 165 A.D.2d 605, 608 (4<sup>th</sup> Dept. 1991). “[E]xceptions should be the product of legislative action, not administrative or judicial construction,” and “an agency may not extend the meaning of statutory language to exclude situations embraced by the statute.” Hospital Ass’n of New York State v. Axelrod, 165 A.D.2d 152, 155 (3d

Dept. 1991).

In the instant case, R&SSL § 607-c(a) contains absolutely no language qualifying or limiting the general term “any.” There is no language limiting “any act of any inmate” to violent acts, disobedient acts, and/or volitional acts. Instead, as in Bath & Hammondsport, the statute contains “the unqualified word ‘any,’” meaning that this word must be given “its full significance as a general term” and neither the Retirement System nor the courts may constrain this language to incorporate only specific types of acts.

This conclusion is further supported by the rule that remedial statutes “should be construed broadly so as to effectuate their purpose.” Scanlan v. Buffalo Pub. Sch. Sys., 90 N.Y.2d 662, 676 (1997). This Court has held that provisions of the R&SSL defining pension eligibility are remedial, see id. at 677 (“We decline to interpret [R&SSL] § 803 in a manner that vitiates its remedial purpose”), and R&SSL § 607-c in particular, by its plain terms, was enacted to provide a remedy to correction officers who suffer disabling injuries due to the acts of inmates. As such, the general word “any” must be construed broadly to encompass all types of inmate acts that cause such injury, and the courts are not authorized to qualify the term “any” with such limitations as “volitional or disobedient.”

Furthermore, none of the recognized exceptions to the rule of broad construction of general terms apply in this case. This is not, for instance, a case in

which broad construction of the word “any” would lead to “absurd, unjust, or other objectionable results.” See McKinney’s Statutes §§ 113, 145, 146, 148. There is nothing absurd, unjust or objectionable about holding that where an inmate being transported in a “high risk van” falls out of the van and injures an officer while attempting to exit the van at the officer’s command, such injury results from a compensable “act” of that inmate. Transportation of inmates, and the risk of injury resulting therefrom, is one of the ordinary and everyday risks that exist in jails and prisons, and it would not be the least bit absurd to include injuries occurring in this context within the scope of the statute. Nor would any public interest be defeated, see McKinney’s Statutes § 152, by granting disability retirement benefits to officers injured by inmates who are engaged in the act of entering or exiting prison vans, and such a holding would not result in a change to a long-established rule, see id., § 153, given that the Kaler rule was announced only in 2011 and the Retirement System had previously interpreted the term “act of an inmate” much more broadly.

In sum, the “any act” language of R&SSL § 607-c(a) – which is the starting point and paramount guide in its construction – is broad and general with no explicit or implicit exceptions written into the statute, and there is no reason to depart from the ordinary rule of giving full effect to such general terms. If the Retirement System wishes the statute to be limited to only certain kinds of inmate

acts, its remedy lies with the Legislature and not with any agency-made or judge-made restrictions on the statutory language. For this reason alone, the Third Department's cabining of Section 607-c to require that inmate acts be "volitional or disobedient" was in error.

**C. The Legislative History Does Not Justify the Judge-Made Limitations Set by the Third Department.**

The Third Department's construction of "any act of any inmate" is also based on an excessively narrow view of the legislative history. In Kaler, *supra* – which, as noted above, was the Third Department's first and leading case construing this statutory language – the Appellate Division relied primarily upon the Governor's memorandum approving R&SSL § 507-b. Quoting from this memorandum, the Kaler court opined that Sections 507-b and 607-c were "clearly intended to compensate correction officers who [become disabled] because of the risks created by their daily contact with certain persons who are dangerous and profoundly antisocial." Kaler, 86 A.D.3d at 899.

Notably, however, the Kaler court's citation of the Governor's memorandum was incomplete. The then-Governor in fact justified the bill as follows:

Correction officers and security hospital treatment assistants work in an environment where they must come into daily contact with certain persons who are dangerous, profoundly anti-social, and who pose a serious threat to their health and safety. When a member sustains a debilitating injury *while executing his or her duties* we must provide them with the means to take care

of themselves and family.

See Bill Jacket, Chapter 722 of the Laws of 1996, at 5 (emphasis added) (Add. 5).<sup>3</sup>

In other words, while the Governor did mention that inmates were dangerous and antisocial, he also spoke more broadly of the need to compensate all correction officers who were disabled by acts of inmates “while executing [their] duties.”

The Kaler court’s citation to the reference to an “increase in altercations” in Assembly Memorandum in Support (Add. 4), see Kaler, 86 A.D.3d at 899, cannot be read to support an inference that the Legislature intended to limit “act of an inmate” to violent fights. As this Court stated in Jensen, supra, “[a] general law may, and frequently does, originate in some particular case or class of cases which is in the mind of the legislature at the time,” but this does not allow the courts “in the absence of express restrictions [to] limit its application to those cases.” Jensen, 82 N.Y.2d at 86. The fact that altercations may have been “in the mind of the legislature at the time” of Section 607-c’s enactment, and may thus have been used as an illustrative example in the Assembly memorandum, does not justify a limitation to such cases – a limitation that, in any event, even the Third Department rejected in DeMaio and Traxler, supra – given that the Legislature did not see fit to build any such restriction into the law.

Moreover, the legislative history of Chapter 639 of the Laws of 1999, which

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<sup>3</sup> Citations to “Add.” refer to the addendum to the brief, which includes all legislative history materials cited herein.



expanded performance of duty disability benefits from state to county correction officers, is also instructive in showing that the Legislature *did not* intend the limitations that the Third Department has judicially imposed. The “justification” provided for this bill by its introducer, Senator Leibell, stated *inter alia* as follows:

Whether performing front line law enforcement or guarding prisoners in county jails these employees are constantly exposed to violence, assault, transmissible disease *and other life threatening situations*. These employees arrest, detain, *transport* and house convicted criminals... in a setting that necessitates a strong disability protection in the event of a career ending injury.

See Bill Jacket, Chapter 639 of the Laws of 1999, at 4 (emphasis added) (Add. 20); see also id. at 5 (Add. 21) (letter of Assembly Member Vitaliano). Again, this justification is not limited to acts of violence and specifically includes injuries sustained while “transporting” prisoners.

Notably, another memorandum submitted in support of the bill indicated that correction officers “face similar risks to those faced by police officers,” indicating that the bill should cover injuries resulting from such risks. See id. at 15 (Add. 31) (memorandum of the Metropolitan Police Conference of New York State).

Petitioner thus respectfully submits that the focus of the Kaler court and its progeny on the “dangerous [and] profoundly anti-social” language in the Governor’s memorandum, and the Third Department’s consequent holding in this case and Martin that an “act of an inmate” must be disobedient or a rule violation,

was too narrow an interpretation of the statute's purpose. Instead, as noted above, the statute has the broad remedial purpose of compensating correction officers who are disabled "while executing [their] duties," and that such duties (a) specifically include "transporting" inmates, and (b) pose risks equivalent to those faced by police officers, who also transport prisoners. This Court should therefore find that an inmate's act of attempting to exit a transport vehicle at Ms. Walsh's command, resulting in injury, is well within the statutory purpose.

**D. Injuries Resulting from Secure Transportation of Inmates are Related to the Inmates' Antisocial Nature.**

Indeed, even if this Court were to read the "profoundly antisocial" language in the Governor's memo as an intent to limit the statute – which the rules of construction do not permit, see Points I(B) and I(C) – the fact remains that the risk and injury in this case flowed precisely from "profoundly antisocial" nature of inmates. One of the consequences of inmates being antisocial is that they must be transported securely and guarded by correction officers rather than being left to make their own way from the courthouse to the jail. And the most antisocial inmates of all – those that pose a high risk to other inmates, correction officers, and indeed themselves – are the ones that must be transported in a "high-risk" van which contains features such as the elevated entrance door that are obviously designed to make escape more difficult.

Here, Ms. Walsh was driving the high-risk van, and the reason for the high

security of that van was that it was transporting inmates who had a known propensity for antisocial behavior. This includes inmate Trettien, who was being unruly in the courthouse due to being drunk or high. Had the inmate not been antisocial, Ms. Walsh would not have been required to transport and interact with her in such a high risk manner, and her act of stepping down from the van would likely not have resulted in a fall.

As noted above, transporting inmates is one of a correction officer's duty and falling is a recognized risk of an inmate stepping down from a vehicle. Moreover, it is a recognized risk that inmates might become intoxicated and unruly and that such acts might result in injury to officers. Thus, the injury suffered here is precisely the kind that can naturally flow from the inmate's affirmative act of stepping down. Moreover, it is precisely this risk that correction officers are required to protect inmates against, and Ms. Walsh was injured because she did her duty to protect the inmate from this danger.

Indeed, the fact that Ms. Walsh's injury resulted from a risk common to the correctional setting is highlighted by the fact that at least three other correction officers have been injured in precisely the same way. The Martin case, supra, involved an officer who was injured when an inmate fell on him from the high-risk van, and during the administrative proceedings in this case, reference was made to

two prior officers, Beattie and Hood, who were hurt in the same fashion.<sup>4</sup> Clearly, the features of the high-risk vehicle, which are peculiar to the correctional setting and which are designed precisely to control the antisocial tendencies of inmates which motivated the Legislature to enact Section 607-c, contributed to the injury here and should bring such injury within the scope of the statute.

The duties of correction officers are care, custody and control of inmates, and the first and most important of those duties is *care*. Ms. Walsh was injured caring for an inmate, and when care of inmates - the highest duty of correction officers - is implicated by the inmates' actions, officers should not be debarred from receiving the benefits due to them for any resulting injuries. Furthermore, petitioner submits that where an inmate's act precipitates a risk that is heightened by a prison setting, the purpose of Section 607-c is sufficiently fulfilled. Therefore, under a correct interpretation of the statute, Ms. Walsh's injury resulted from a sufficient "act of an inmate."

**E. The Third Department's Holding Fails Even on Its Own Terms Because Ms. Trettien's Fall was Indisputably Preceded by Volitional Acts.**

Indeed, the Third Department's holding in this case fails *even on its own terms*, because inmate Trettien's acts leading up to the fall clearly were "volitional." It is undisputed that Ms. Trettien engaged in physical movement aimed to exit the high-risk van at Ms. Walsh's command – something that clearly

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<sup>4</sup> Notably, both Officer Beattie and Officer Hood were granted benefits.

required volition on her part – and that she took one and a half steps, which also required her to exercise volition. Neither obeying orders nor taking steps is an autonomic function.

Of course, Ms. Trettien’s act did not end in the way she intended, but that does not make it any less an act. Moreover, Ms. Trettien’s fall cannot be separated from her underlying act of attempting to exit the van, any more than an automobile crash can be separated from the underlying act of driving a car. There was no attenuation whatsoever between the acts and the resulting slip and fall. And the dangerousness of this act to Ms. Walsh was heightened by the correctional setting, including Ms. Trettien’s handcuffs, the elevated entrance/exit door of the high risk van, and the fact that she had to negotiate steep steps down.

Thus, reversal of the Third Department’s holding in the instant case is not only required by the principles of construction discussed above but is also consistent with the Third Department’s jurisprudence prior to the restrictions that it imposed in this case and Martin. As noted in Point I(A), the Third Department held in 2016 that, while an “affirmative act” is required, the act need not be intentional. See DeMaio, 137 A.D.3d at 1546. Acts that result in accidental consequences can fall within the scope of the statute; thus, in Traxler, supra, the Third Department found that an “act of an inmate” occurred when an inmate accidentally released a gate causing it to strike the petitioner, even though the gate

struck petitioner due to the operation of its self-closing mechanism (as opposed to the inmate deliberately pushing it) and the petitioner “did not believe that the inmate intended to injure her.”

Nor is the Third Department’s citation of Laurino, supra, to the contrary, because the injury in Laurino did not flow from *any* act committed by the inmate. In Laurino, the correction officer encountered an inmate who was having a seizure, and while she was assisting him, he went limp and started to fall, causing her to be injured. The court likened this to other situations where a correction officer was injured while “assisting an *incapacitated* inmate during a *medical emergency*,” and found that there was an “absence of any affirmative act” on the inmate’s part. Laurino, 132 A.D.3d at 1057 (emphasis added).

The Laurino holding does not control the instant case because, in Laurino, there was no act by the inmate that even indirectly led to injury. His fall was caused not by any voluntary physical movement on his part, but because he was having a seizure and his body was reacting automatically. Nothing he did caused him to have the seizure or to fall.

This case, in contrast, was not a “medical emergency,” nor was the inmate who fell on top of Ms. Walsh “incapacitated” and incapable of performing physical acts. Instead, as discussed above, she *did* perform a physical act, namely stepping down after becoming drunk or high, which caused her to fall and which occurred

during direct interaction with Ms. Walsh. Hence, even if Laurino was correctly decided, which petitioner does not concede here, it does not support the denial of Section 607-c(a) benefits in her case.

Perry v. DiNapoli, 88 A.D.3d 1047, 1048 (3d Dept. 2011), in which the petitioner tripped over a mop bucket while supervising inmates mopping floors, is even further from the instant case. Under those circumstances, the Third Department determined that Perry's injuries were not caused by "direct interaction" with an inmate; instead, the injuries were caused by Perry's own misstep of walking backwards into the mop bucket. Again, there was no physical act of an inmate that had anything to do with the injuries in Perry, whereas in this case, there was.

Nor do Hernandez v. New York City Employees' Ret. Sys., 148 A.D.3d 706 (2d Dept. 2017) or Stevens v. DiNapoli, 155 A.D.3d 1294 (3d Dept. 2017), also cited by respondents, support their position in this case, because both Hernandez and Stevens were decided on issues of credibility. In Hernandez, the petitioner claimed to have been pushed by an inmate but this claim was inconsistent with contemporaneous incident reports. See Hernandez, 148 A.D.3d at 707-08. Likewise, in Stevens, the petitioner claimed to have been injured by a branch that an inmate was in the act of clearing, but the incident reports and the accounts of other inmates "indicat[ed] instead that the branch fell straight down to the ground."

See Stevens, 155 A.D.3d at 1295-96.

In this case, there were no similar inconsistencies or disputes about how the accident happened, and therefore, no questions of credibility upon which the ALJ could or did determine that Ms. Walsh' injury did not result from the inmate's act of attempting to exit the van while handcuffed and intoxicated. Indeed, the hearing officer credited Ms. Walsh's testimony in full and did not dispute any part of her account of the incident.

**F. Injuries Resulting from the Acts of Voluntarily Intoxicated Inmates Should Not Be Excluded from R&SSL § 607-c.**

Finally, petitioner submits that, under a correct interpretation of the statute, it was a further error for the Third Department to treat Ms. Trettien's intoxication as a factor that made her act less "volitional." This is a dangerous precedent for officers who must deal with inmates who are high on alcohol or drugs – indeed, getting high in a correctional setting is one of the "dangerous [and] anti-social" traits of inmates with which the Governor recognized that correction officers must contend. An inmate who becomes drunk or high in a correctional setting, where alcoholic beverages are banned, is by definition unruly, and drunk inmates – like drunk individuals in general – are more dangerous to themselves and others than sober ones.

This, as much as lack of basis in the statutory language or purpose, is a key problem with the Third Department's "volitional or disobedient" construction.



Where intoxicated inmates are concerned, the very condition that makes them more dangerous and makes their acts more likely to result in injury can be held – indeed, in this case, *was* held – to make their acts less “volitional.” This would result in correction officers being deprived of the benefit of Section 607-c and its sister statutes precisely when they need those benefits most.

In other words, if the Third Department’s decision in this case is allowed to stand, then officers who are injured by inmates who are drunk or high – and therefore more dangerous than sober ones – will risk being denied disability benefits because the court will view the inmate’s drunkenness as a mitigating factor that makes their acts less “volitional” rather than as the hazard of employment that it is. The Third Department’s myopic focus on the “volitional” nature of the act leaves a gaping hole in the statute’s protective scheme where officers are injured by inmates who become illicitly drunk or high.

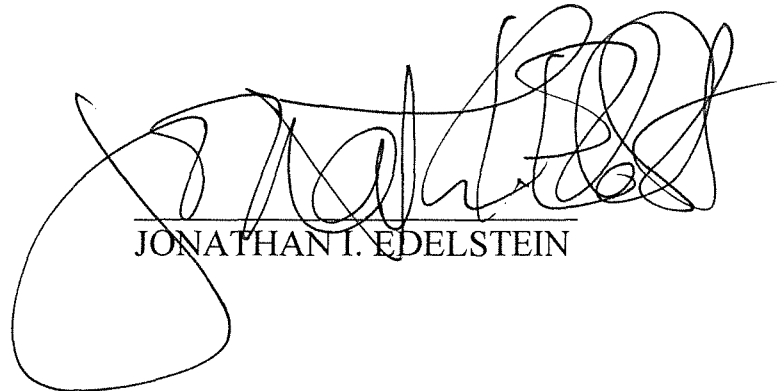
And again, the fact that Ms. Trettien was drunk or high also differentiates this case from Laurino and Esposito, *supra*, upon which both respondents and the Third Department relied. In both Laurino and Esposito, the inmate suffered a medical emergency that did not result from any conduct on his or her part, whereas in this case, Ms. Trettien’s poor balance resulted from her voluntary intoxication. This Court should thus find that these authorities do not control or support the holding in this case and should establish the principle that, where an intoxicated

inmate performs an act that causes disabling injuries to a correction officer, such act is an “act of an inmate” within the meaning of R&SSL § 607-c without needing to also be “volitional or disobedient.”

**CONCLUSION**

WHEREFORE, in light of the foregoing, this Court should reverse the Third Department’s order, vacate and annul respondents’ administrative determination, direct that petitioner-appellant Walsh be granted Section 607-c Disability Retirement Benefits, and grant such other and further relief to petitioner-appellant as it may deem just and proper.

Dated:       New York, NY  
              October 3, 2018

  
\_\_\_\_\_  
JONATHAN I. EDELSTEIN

**CERTIFICATE OF COMPLIANCE**

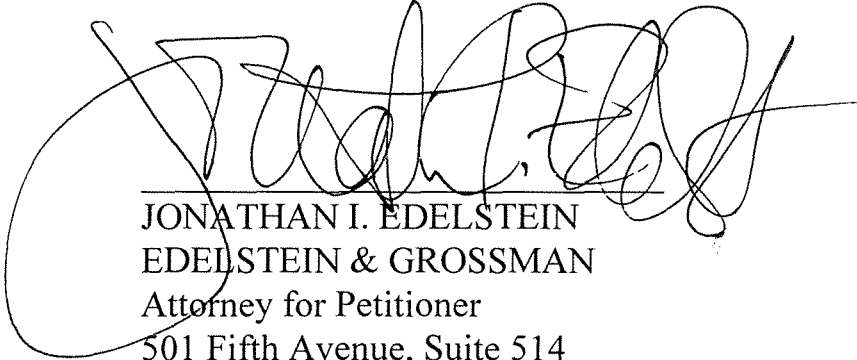
I hereby certify pursuant to 22 NYCRR § 510.13(c)(i) that the foregoing reply brief was prepared on a computer.

A proportionally spaced typeface was used, as follows:

Name of Typeface:	Times New Roman
Point size:	14
Line spacing:	Double

The total number of words in this brief, inclusive of point headings and footnotes, and exclusive of pages containing the table of contents, table of citations, proof of service, certificate of compliance or any authorized addendum containing statutes, rules, regulations, etc., is 8,609.

Dated:       New York, NY  
              October 3, 2018



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# **ADDENDUM**

APPROVAL # 129  
BILL JACKET FOR L. 1996, C. 722 [1-16]

CHAPTER 722

LAWS OF 19 96

MEMORANDUM NO. \_\_\_\_\_

SENATE BILL \_\_\_\_\_

ASSEMBLY BILL 11205 B

11205--B

IN ASSEMBLY

June 20, 1996

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Vitaliano, Christensen, Destito, Englebright, Harenberg, John, Keane, Luster, Magee, Matusow, Morelle, Pillittere, Sidikman, Sweeney) -- read once and referred to the Committee on Governmental Employees -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the retirement and social security law, in relation to benefits for members in the uniformed personnel in institutions under the jurisdiction of the department of correctional services or who are security hospital treatment assistants, who are injured in the performance of their duties

DATE RECEIVED BY GOVERNOR:

12/24/96

ACTION MUST BE TAKEN BY:

30 day

1/30/97  
12/31/96

DATE GOVERNOR'S ACTION TAKEN:

JAN 28 1997

ADD. 1  
Add. 1

12

SENATE VOTE    \_\_\_ Y    \_\_\_ N

HOME RULE MESSAGE    \_\_\_ Y    \_\_\_ N

DATE \_\_\_\_\_

BILL IS DISAPPROVED

ASSEMBLY VOTE    \_\_\_ Y    \_\_\_ N

DATE \_\_\_\_\_

DATE \_\_\_\_\_

COUNSEL TO THE GOVERNOR

A11205-B



THE ASSEMBLY  
STATE OF NEW YORK  
ALBANY

ERIC N. VITALIANO  
60th District  
Richmond County

CHAIRMAN  
Committee on Governmental Employees

January 22, 1997

Hon. Michael Finnegan  
Counsel to the Governor  
Executive Chamber  
State Capitol  
Albany, NY 12224

Dear Mr. Finnegan:

I am writing in support of A. 11205-B which is before the Governor for final disposition. This bill would provide correction officers and security hospital treatment assistants who are injured in the performance of their duties with a disability pension.

Correction officers and security hospital treatment assistants perform vital public services in very dangerous circumstances. They are required to work daily with the most dangerous persons in our society.

Department of Correctional Services records reveal an increase in the number of altercations between inmates, and inmates and officers. In many cases, officers have had to retire because the injuries they sustained prevent them from performing the duties of the job. Currently, a severe inequity exists between the disability retirement provisions that cover corrections officers and security hospital treatment officers and the benefits provided to other law enforcement officers similarly disabled. This bill corrects that inequity.

For these reasons, I urge the Governor to sign this bill into law.

With kind regards, I am

Sincerely,

Eric N. Vitaliano  
Member of Assembly

ENV:mf

100007

SR

NEW YORK STATE ASSEMBLY  
MEMORANDUM IN SUPPORT OF LEGISLATION  
submitted in accordance with Assembly Rule III, Section 1(e)

Bill Number: Assembly: 11205 Senate:  
Memo on Original Draft of Bill: XX Amended bill:  
Sponsors: Members of Assembly: Vitaliano  
Senate:

Introduced at the request of:

**TITLE OF BILL:**

AN ACT to amend the Retirement and Social Security Law, in relation to benefits for members in the uniformed personnel in institutions under the jurisdiction of the department of correctional services or who are security hospital treatment assistants, who are injured in the performance of their duties.

**PURPOSE OR GENERAL IDEA OF BILL:**

This bill intends to provide correction officers and security hospital treatment assistants a proper pension in cases of employment related disabilities.

**SUMMARY OF SPECIFIC PROVISIONS:**

This bill would provide a 3/4 disability pension benefit to state correction officers and security hospital treatment assistants who sustain injuries in the performance of their duties. It also provides that HIV, tuberculosis and hepatitis are to be presumed to be employment related illnesses eligible for a disability pension.

**EFFECTS OF PRESENT LAW WHICH THIS BILL WOULD ALTER:**

The present disability pension is 1/3 of salary.

**JUSTIFICATION:**

Over the last decade the inmate population of the State's prison system has literally exploded. This unprecedented growth in the number of inmates has resulted in a system that is being operated at 133 percent of capacity. The strain and tension created by this situation has manifested itself in an increase of altercations between inmates and between inmates and officers. In fact, one only has to look in the newspaper to see that prison altercations where correction officers and MHTA's have been injured have almost become a weekly occurrence. In many cases these officers have had to retire because the injuries they sustained prevent them from performing the duties of the job. Currently, a sever inequity exists in the disability retirement provisions that cover corrections officers and MHTA's.

**PRIOR LEGISLATIVE HISTORY:**

None.

**FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS:**

If this bill is enacted, there will be an increase of approximately \$3.5 million in the annual contributions of the State of New York for the fiscal year ending March 31, 1997. In future years this cost will eventually increase to approximately 0.7 percent of the annual salaries of affected Tier 3 and 4 members.

**EFFECTIVE DATE:**

This act shall take effect immediately.

June 20, 1996

106-005





STATE OF NEW YORK  
EXECUTIVE CHAMBER  
ALBANY 12224

JAN 28 1997

MEMORANDUM filed with Assembly Bill Number 11205-B, entitled:

CHAPTER 722  
APPROVAL #129

"AN ACT to amend the retirement and social security law, in relation to benefits for members in the uniformed personnel in institutions under the jurisdiction of the department of correctional services or who are security hospital treatment assistants, who are injured in the performance of their duties"

APPROVED

The bill amends the Retirement and Social Security Law to provide state correction officers and security hospital treatment assistants, who become physically or mentally incapacitated as a result of an injury sustained in the performance or discharge of their official duties, a performance of duty retirement benefit of three-quarters of their final average salary. The bill further provides a presumption that a member who contracts HIV, tuberculosis or hepatitis, did so while performing or discharging his or her official duties and is disabled.

Correction officers and security hospital treatment assistants work in an environment where they must come into daily contact with certain persons who are dangerous, profoundly anti-social, and who pose a serious threat to their health and safety. When a member sustains a debilitating injury while executing his or her duties we must provide them with the means to take care of themselves and family.

The bill is approved.

MRA

A 11205-B

H. CARL McCALL  
STATE COMPTROLLER



A.E. SMITH STATE OFFICE BUILDING  
ALBANY, NEW YORK 12236

STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

January 2, 1997

The Honorable Michael C. Finnegan  
Counsel to the Governor  
Executive Chamber  
State Capitol, Room 225  
Albany, New York 12224

Re: A. 11205-B

Dear Mr. Finnegan:

Thank you for requesting our comments regarding the above-captioned bill.

We have reviewed this measure and have no objection to its enactment.

Very truly yours,

A handwritten signature in cursive script that reads "Dixie A. Hathaway".

Dixie A. Hathaway  
Assistant Deputy Counsel

DAH:dr

104-010

**Add. 6**

J

C-722

A-11205

BUDGET REPORT ON BILLS

Session Year 1996

B-201

SENATE  
No.

Introduced by:  
Committee on Rules

ASSEMBLY  
No. 11205-B

Law: Retirement and Social Security

Sections: 63-a (new), 444, 507-b (new), 510,  
607-a (new)

Division of the Budget recommendation on the above bill:

Approve: \_\_\_\_\_ Veto: \_\_\_\_\_ No Objection:  X  No Recommendation: \_\_\_\_\_

1. Subject and Purpose: To provide State Correction Officers (COs) and Security Hospital Treatment Assistants (SHTAs) with a performance of duty disability retirement benefit of three-quarters of final average salary (FAS).
2. Summary of Provisions: Effective immediately, this bill would amend the Retirement and Social Security Law to provide COs and SHTAs who become physically or mentally incapacitated for the performance of duty as the natural and proximate result of an injury sustained in the performance of their duties by, or as the result of, any act of an inmate or person confined in an institution under the jurisdiction of the Department of Correctional Services or Office of Mental Health, with a performance of duty disability benefit of three-quarters of FAS.

This bill would also provide that an employee described above who contracts HIV (where there may have been an exposure to a bodily fluid of an inmate), tuberculosis or hepatitis would be presumed to have contracted such disease in the performance or discharge of his/her duties, and would be eligible for the performance of duty disability benefit.

Currently, job-related disability retirement benefits vary, with Tier 1 employees receiving three-quarters of FAS, most Tier 2 and 3 employees receiving about sixty percent of FAS and Tier 4 employees receiving approximately one-third of FAS. The Tier 1, 2 and 3 benefits are offset by Workers' Compensation benefit payments.

3. Legislative History: This is a new bill.

Arguments in Support:

- a. State COs and SHTAs face an increasingly dangerous job and should be eligible for an enhanced accidental disability benefit of seventy-five percent of FAS.
- b. The additional costs resulting from this legislation have been anticipated in the development of the State's Financial Plan and, thus, can be accommodated.

Arguments in Opposition:

- a. It could be argued that this bill is inconsistent with past pension reforms that were

intended to limit the abuse of disability benefits. Moreover, it would provide a greater disability benefit to State COs and SHTAs than that afforded to most other Tier 2, 3 and 4 State and local employees.

- b. It could also be argued that this bill would provide an enhanced disability retirement benefit to a limited group and would set a precedent that could prompt additional requests for similar treatment from other employee groups.

6. Other State Agencies Interested: None known.

7. Other Interested Groups: None known.

8. Budget Implications: This bill would cost the State approximately \$15.5 million in SFY 1997-98 and approximately \$3.5 million annually thereafter. In the future, this annual cost would eventually increase to approximately 0.7 percent of the salaries of affected Tier 3 and 4 retirement system members.

9. Recommendation: No Objection.

This bill would provide State COs and SHTAs with a performance of duty disability retirement benefit of three-quarters of FAS. It would recognize the increasingly dangerous environment in which COs and SHTAs work. Moreover, while this bill will result in added costs to the State, those costs have been anticipated in the development of the State's Financial Plan and, thus, can be accommodated. Therefore, we have no objection to enactment.

*January 14, 1997*

*SR*

100-0214

**Add. 8**

MRA

A-11205-B



STATE OF NEW YORK  
DIVISION OF CRIMINAL JUSTICE SERVICES  
EXECUTIVE PARK TOWER  
STUYVESANT PLAZA  
ALBANY, NEW YORK 12203-3764

December 23, 1996

Honorable Michael C. Finnegan  
Counsel to the Governor  
Executive Chamber  
State Capitol - Room 225  
Albany, NY 12224

Re: Assembly Bill Number 11205-B  
**No Recommendation**


Dear Mr. Finnegan:

This is in response to your request for comment on the above-referenced legislation which amends the Retirement and Social Security Act to provide benefits for members in the uniformed personnel in institutions under the jurisdiction of the Department of Correctional Services or who are security hospital treatment assistants who are injured in the performance of their duties.

It does not appear that this legislation will have any direct impact on the operations of this agency. Accordingly, the Division of Criminal Justice Services makes **no recommendation** on A. 11205-B.

Thank you for the opportunity to comment on this legislation.

Sincerely,

  
Debra E. White  
Legislative Coordinator

cc: Michael Ambrecht

*MRA*

*A. 11205-B*



STATE OF NEW YORK  
DEPARTMENT OF CIVIL SERVICE  
THE STATE CAMPUS  
ALBANY, NEW YORK 12239



GEORGE C. SINNOTT  
COMMISSIONER

THOMAS G. PILLSWORTH  
EXECUTIVE  
DEPUTY COMMISSIONER

MEMORANDUM

December 24, 1996

TO: Honorable Michael C. Finnegan  
Counsel to the Governor

FROM: Daniel E. Wall *DEW*  
General Counsel

SUBJECT: A.11205-B (Introduced by the Committee on  
Rules)

STATUTE INVOLVED: Sections 63-a (New), 444(a), 507-b (New),  
510, and 607-a (New) of the Retirement and  
Social Security Law

EFFECTIVE DATE: Immediately

RECOMMENDATION: No Objection

DISCUSSION:

The bill amends the Retirement and Social Security Law to provide Performance of Duty Disability Retirement benefits for members of the uniformed personnel in institutions under the jurisdiction of the Department of Correctional Services, as well as for security hospital treatment assistants, who become physically or mentally incapacitated as a natural and proximate result of an injury sustained in the performance or discharge of official duties. In addition, the bill provides instances where a member who contracts HIV, tuberculosis or hepatitis shall be presumed to be disabled as a result of having contracted such disease in the performance or discharge of official duties.

As the bill does not affect administration of the civil service merit system, this Agency proffers no objection to its being signed into law.

DEW/JJH:tpH

cc: Susan Read, Esq.

100-11205

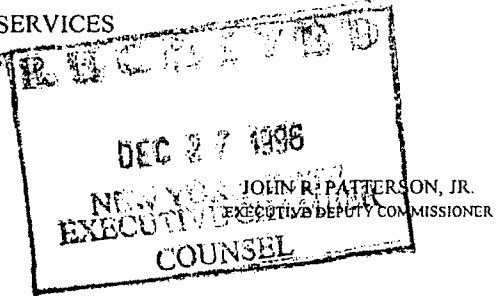
AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

**Add. 10**



GLENN S. GOORD  
ACTING COMMISSIONER

STATE OF NEW YORK  
DEPARTMENT OF CORRECTIONAL SERVICES  
THE HARRIMAN STATE CAMPUS  
1220 WASHINGTON AVENUE  
ALBANY, N.Y. 12226-2050



December 30, 1996

Michael C. Finnegan, Esq.  
Counsel to the Governor  
Executive Chamber  
State Capitol  
Albany, New York 12224

RE: A11205-B

The aforementioned bill amends the Retirement and Social Security Law in relation to Department of Correctional Services' uniformed personnel who are injured in the performance of their duties.

The Department of Correctional Services strongly supports the proposed legislation.

Very truly yours,

John R. Patterson, Jr.  
Executive Deputy Commissioner

JRP/17/eab

Enclosure

cc: ~~Michael Ambrecht, Esq.~~  
Anthony J. Annucci, Deputy Commissioner and Counsel

**Add. 11**

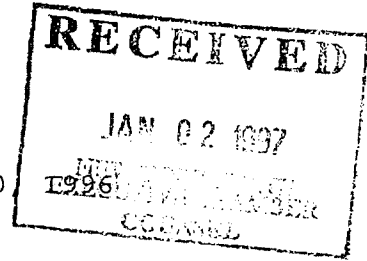
MPA

JN → BILL JACKES  
A 11205-B



Jerome Tracy  
Counsel

STATE OF NEW YORK  
DEPARTMENT OF LABOR  
Governor W. Averell Harriman  
State Office Building Campus  
Albany, New York 12240



December 30

Michael C. Finnegan  
Counsel to the Governor  
Room 210  
The Capitol  
Albany, New York 12224

Re: A.11205-B - AN ACT to amend the retirement and social security law, in relation to benefits for members in the uniformed personnel in institutions under the jurisdiction of the department of correctional services or who are security hospital treatment assistants, who are injured in the performance of their duties.

Dear Mr. Finnegan:

The above-referenced bill amends the Retirement and Social Security Law to provide state correction officers and security hospital treatment assistants, who become physically or mentally incapacitated for the performance of their duties as a result of an injury sustained in the performance of their duties or as a result of an act of any person confined to such institutions, a performance of duty retirement benefit of 75% of their final average salary.



Telephone (518) 457-3665

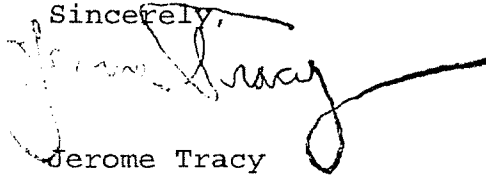
Fax (518) 485-1819

ADD. 12



The Department of Labor has no objection to this bill. In addition, it should be noted that the bill's fiscal note cost analysis will be offset by lower workers' compensation payments for affected members of Tier 3 and 4 of the Retirement System.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerome Tracy", with a long horizontal flourish extending to the right.

Jerome Tracy  
Counsel

cc: William Howard  
Kevin Rampe

100017

**Add. 13**

MEFA

A-11205-B

# LAW ENFORCEMENT OFFICERS UNION

*"The Guardians Of New York"*



## THREE-QUARTER DISABILITY RETIREMENT FOR CORRECTIONS OFFICERS

Senate 6559-B / Assembly 11205-B

The Law Enforcement Officers Union, Council 82 AFSCME, represents the more than 23,000 correction officers, sergeants and lieutenants that are the backbone of the New York State Correctional system.

Over the last decade the inmate population of the State's prison system has literally exploded. This unprecedented growth in the number of inmates has resulted in a system that is being operated at 133% of capacity. The strain and tension created by this situation has manifested itself in an increase of altercations between inmates and between inmates and officers. In fact, one only has to look in the newspaper to see that prison altercations in which correction officers have been injured have almost become a monthly occurrence. In many cases these officers have had to retire because the injuries they sustained prevent them from performing the duties of the job.

Currently, a severe inequity exists in the disability retirement provisions that cover corrections officers. All correction officers work in the same stressful and dangerous environment. The level of risk faced by an officer is not mitigated by the tier of the retirement system that he or she belongs to. It is only fair and equitable that they be afforded the same protections if they are injured in the performance of their duties. It is for these reasons that Council 82 urges the Governor to sign this legislation so that the same three-quarter, performance of duty disability retirement provision protects all correction officers.

Respectfully submitted,

John S. D'Alessandro  
Legislative / Political Director

**AFSCME COUNCIL 82, AFL-CIO**  
63 COLVIN AVENUE, ALBANY, NEW YORK 12206 (518) 489-8424

ADD. 14

SR

TW A-11205-B

C722

New York State  
**AFL-CIO**

48 East 21st Street - 12th Floor  
New York, New York 10010  
(212) 777-6040  
Fax (212) 777-8422

100 South Swan Street  
Albany, New York 12210-1939  
(518) 436-8516  
Fax (518) 436-8470



**EDWARD J. CLEARY**  
President

**PAUL F. COLE**  
Secretary-Treasurer



January 3, 1997  
A.11205-B

Honorable George Pataki  
Governor, New York State  
Executive Chamber  
State Capitol  
Albany, NY 12224

Atten: Michael C. Finnegan, Counsel

Dear Governor Pataki:

The New York State AFL-CIO representing 2.5 million working men and women strongly urge your support of A.11205-B Vitalliano.

Correction officers, guarding violent criminals, often are exposed to infectious diseases limiting their ability to work. This legislation would allow correction officers who contract infectious diseases such as tuberculosis, hepatitis or HIV, to be paid a performance of duty disability retirement allowance. This bill ensures that correction officers are provided protections while on duty and are duly compensated when injured on the job.

Therefore, this Federation strongly urges your support in signing A.11205-B into law.

Sincerely,

Ed Donnelly,  
Legislative Director

ED:AR:ac  
opeiu-153

100-019  
**Add. 15**

MAA

A-11205-B

# Correction Officers' Benevolent Association, Inc.

*"Patrolling the Toughest Precincts in New York"*

City of New York

335 Broadway  
Suite 515  
New York, NY 10013

December 27, 1996

**Norman Seabrook**  
President

**Israel Rexach**  
1st Vice-President

**Tim Dillon**  
2nd Vice-President

**Teresa Braxton**  
3rd Vice-President

**Elias Husamudeen**  
Treasurer

**Elizabeth Castro**  
Financial Secretary

**William Kwasnicki**  
Legislative Chairman

**Guy Anderson**  
Corresponding Secretary

**Robert Seabrook**  
Recording Secretary

**Steve Robinson**  
Sergeant-At-Arms

Honorable Michael C. Finnegan  
Counsel to the Governor  
Executive Chamber  
State Capitol  
Albany, NY 12222

Subject: A 11205B-Rules (at request of M. of A. Vitaliano, et. al.) entitled "An act to amend the retirement and social security law, in relation to benefits for members in the uniformed personnel in institutions under the jurisdiction of the department of correctional services or who are security hospital treatment assistants, who are injured in the performance of their duties."

Dear Mr. Finnegan:

On behalf of the 10,000 uniformed Correction Officers represented by the New York City Correction Officers' Benevolent Association, Inc., I would like to thank you for affording me the opportunity to comment on the aforementioned legislation that is before the Governor for his action.

The New York City Correction Officers' Benevolent Association, Inc. fully supports the provisions of this measure which will provide state Correction Officers with a performance of duty disability benefit of three-quarters of their final average salary, and urges the Governor to sign it into law.

Furthermore, it should be noted that this association will be introducing legislation to provide the same benefit to its members and it is hoped that the State Legislature and the Governor will act favorably on it also.

Respectfully,



Norman Seabrook

100-020



80

**BILL JACKET FOR L. 1999, C. 639 [17-38]**

CHAPTER 257

LAWS OF 19 99

MEMORANDUM NO. \_\_\_\_\_

SENATE BILL 3136

ASSEMBLY BILL \_\_\_\_\_

S. 3136

A. 5861

1999-2000 Regular Sessions

**SENATE - ASSEMBLY**

March 2, 1999

IN SENATE -- Introduced by Sen. LEIBELL -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

IN ASSEMBLY -- Introduced by M. of A. VITALIANO -- Multi-Sponsored by M. of A. LUSTER, MAZZARELLI -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the retirement and social security law, in relation to performance of duty disability retirement for certain correction officers

DATE RECEIVED BY GOVERNOR:

000001

11/18

ACTION MUST BE TAKEN BY:

11/30

DATE GOVERNOR'S ACTION TAKEN

NOV 30 1999

17

000002

SENATE VOTE 57 Y 2 N

HOME RULE MESSAGE \_\_\_ Y \_\_\_ N

DATE 6/14/99

BILL IS DISAPPROVED

ASSEMBLY VOTE \_\_\_ Y \_\_\_ N

DATE \_\_\_\_\_

DATE \_\_\_\_\_

COUNSEL TO THE GOVERNOR

**Add. 18**

S3136 LEIBELL

Senate Vote Bill: S3136 Date: 06/14/1999 Aye - 57 Nay - 2

Aye Alesi	Aye Balboni	Aye Bonacic	Aye Breslin
Aye Bruno	Aye Connor	Aye DeFrancisco	Aye Dollinger
Nay Duane	Aye Farley	Aye Fuschillo	Aye Gentile
Aye Gonzalez	Aye Goodman	Aye Hannon	Aye Hevesi
Aye Hoffmann	Aye Johnson	Aye Kruger	Aye Kuhl
Aye Lachman	Aye Lack	Aye Larkin	Aye LaValle
Aye Leibell	Aye Libous	Aye Maltese	Aye Marcellino
Aye Marchi	Aye Markowitz	Aye Maziarz	Aye McGee
Aye Meier	Aye Mendez	Aye Montgomery	Aye Morahan
Aye Nanula	Aye Nozzolio	Aye Onorato	Aye Oppenheimer
Aye Padavan	Aye Paterson	Aye Rath	Aye Rosado
Aye Saland	Exc Sampson	Aye Santiago	Nay Schneiderman
Aye Seabrook	Aye Seward	Aye Skelos	Aye Smith
Aye Spano	Aye Stachowski	Aye Stafford	Exc Stavisky
Aye Trunzo	Aye Veleva	Aye Volker	Aye Waldon
Aye Wright			

000003

**S3136 LEIBELL**

**BILL NUMBER: S3136**

**PURPOSE OR GENERAL IDEA OF BILL:**

This bill would give counties the option of offering a 3/4 disability retirement to sheriffs, undersheriffs, deputy sheriffs and correction officers who are no longer able to perform their duty as a result of an injury sustained on the job. This bill also creates the presumption that a member covered under this act who is diagnosed with HIV, tuberculosis or hepatitis, contracted the disease while in the line of duty unless the contrary can be proven.

**SUMMARY OF SPECIFIC PROVISIONS:**

This bill creates authorizes a county to provide a 3/4 performance of duty disability retirement for sheriff, undersheriffs, deputy sheriffs and correction officers and to make such employees who contract HIV, tuberculosis or hepatitis in the performance of those duties eligible for that benefit.

**EFFECTS OF PRESENT LAW WHICH THIS BILL WOULD ALTER:**

Current law does not provide sheriffs, undersheriffs, deputy sheriffs or correction officers this benefit.

**JUSTIFICATION:**

Sheriffs, deputy sheriffs, undersheriffs and correction officers employed by counties serve in one of the most dangerous aspects of the criminal justice system. Whether performing front line law enforcement or guarding prisoners in county jails these employees are constantly exposed to violence, assault, transmissible disease and other life threatening situations. These employees arrest, detain, transport and house convicted criminals, including state ready inmates, and work in a setting that necessitates a strong disability protection in the event of a career ending injury.

This bill permits a county to provide a performance of duty disability retirement at 3/4 of final average salary in the event that one of these employees is injured and as a result can no longer perform this vital service. The constant risk of injury and the stress of doing this vital job merits protection. These employees and their families have earned the peace of mind that in the event of a life-threatening injury, their livelihoods will not be jeopardized.

Chapter 722 of the Laws of 1996 granted this same benefit to correction officers employed by the department of corrections and security hospital assistants within the Office of Mental Health. County sheriffs, deputy sheriffs, undersheriffs and correction officers serve in virtually the same capacity and often house state ready inmates for lengthy periods of times. They should be entitled to the same benefit as their counterparts in-state service.

**PRIOR LEGISLATIVE HISTORY:**

1998: A.9798 Passed Both houses - Vetoed on technical grounds which this bill corrects

**FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS:**

For those counties which opt to provide this benefit, it is estimated that there would be an annual cost of up to 1% of salaries of effect employees and a prior service cost of up to 1.5% of the salaries of effected employees.

**EFFECTIVE DATE:**

Immediate

000004





THE ASSEMBLY  
STATE OF NEW YORK  
ALBANY

ERIC N. VITALIANO  
60th District  
Richmond County

CHAIRMAN  
Committee on Governmental Employees

July 1, 1999

Hon. James McGuire  
Counsel to the Governor  
Executive Chamber  
Albany, NY 12224

Dear Mr. McGuire:

I am writing in support of Assembly bill 5861 / Senate bill 3136 which is before the Governor for final disposition.

This bill would permit a county to provide its sheriff, undersheriffs, deputy sheriffs or county correction officers who are injured in the performance of their duties with a three-quarters disability pension. It would also provide that HIV, tuberculosis and hepatitis are to be presumed to be job related illnesses eligible for a disability pension, unless the contrary can be proven by competent evidence.

Sheriffs, deputy sheriffs, undersheriffs and correction officers employed by counties serve in one of the most dangerous aspects of the criminal justice system. Whether performing front line law enforcement or guarding prisoners in county jails, these employees are constantly exposed to violence, assault, transmittible disease and other life threatening situations. These employees arrest, detain, transport and house convicted criminals, including state ready inmates, and work in a setting that necessitates a strong disability protection in the event of a career ending injury.

Chapter 722 of the Laws of 1996 granted this same benefit to correction officers and security hospital assistants. County sheriffs, deputy sheriffs, undersheriffs and correction officers serve in virtually the same capacity. Therefore, they should be entitled to the same benefit.

For these reasons, I urge the Governor to sign this legislation into law.

With kind regards, I am

Sincerely,

000005

Eric N. Vitaliano  
Member of Assembly

ENV: jg

B-201

BUDGET REPORT ON BILLS

8 3136  
Session Year 1999

SENATE  
No. 3136

Introduced by:  
Senator Leibell

ASSEMBLY  
No.

Law: Retirement and Social Security

Sections: 63-b, 607-c

Division of the Budget recommendation on the above bill:

Approve: \_\_\_\_\_ Veto:  X  No Objection: \_\_\_\_\_ No Recommendation: \_\_\_\_\_

1&2. Subject, Purpose and Summary of Provisions:

Effective immediately, this bill would amend the Retirement and Social Security Law to give counties the option to provide an improved performance of duty disability benefit to county sheriffs, deputy sheriffs, undersheriffs and correction officers equal to three-quarters of salary.

Eligibility for this benefit would require the injury to be sustained as the result of an act of an individual confined in a county institution. In addition, eligibility is provided to employees who contract tuberculosis, HIV, or hepatitis under the statutory presumption that these diseases were work-related.

3. Legislative History:

This legislation was vetoed in 1998 (veto #1411).

The Governor vetoed a similar bill in 1997 (veto #60), which would have extended eligibility for the accidental disability benefit to include police officers and firefighters who contract HIV, tuberculosis, and hepatitis.

Legislation has been approved in recent years to provide a similar benefit to State correction officers (Chapter 722 of the Laws of 1996) and emergency medical technicians employed by the City of New York (Chapter 587 of the Laws of 1998).

Two other bills were approved by the Legislature in 1999 which would provide this benefit to members of the New York State and Local Police and Fire Retirement System (S.3385-A) and police officers and firefighters employed by the City of New York (S.3796-A).

4. Arguments in Support:

Sponsors of this legislation claim that county sheriffs, deputy sheriffs, undersheriffs and correction officers should be entitled to the same disability benefits as their counterparts in State service. Legislation approved in 1996 provided a similar accidental disability benefit to State correction officers and security hospital assistants employed by the Office of Mental Health.

000005

5. Arguments in Opposition:

- a. This benefit improvement lacks any compelling justification. In vetoing a similar bill last year, the Governor stated that "any reform of disability and other benefit structures for law enforcement personnel must be looked at in a comprehensive and uniform manner, based upon evidence which firmly justifies the proposed changes." No empirical evidence has been provided to justify this benefit change. It is not in the interest of taxpayers to grant this generous benefit without sound empirical justification.
- b. This bill would create inequities in the benefit structure between county law enforcement employees and other police officers in the State.
- c. It would be more sound public policy to reform the disability benefit structure for law enforcement personnel in a comprehensive and uniform manner based on studies which justify the benefit changes.

6. Other State Agencies Interested:

No public positions of other interested groups are known at this time.

7. Other Interested Groups:

No public positions of other interested groups are known at this time.

8. Budget Implications:

According to the Actuary of the New York State and Local Retirement Systems, counties electing to offer this benefit improvement would realize two types of costs: (i) an immediate past service cost of approximately 1.3% of affected members' salaries; and (ii) ongoing annual costs of up to 1.0% of affected members' salaries in the future.

9. Recommendation: Veto.

This bill would give counties the option to provide an improved performance of duty disability benefit to county sheriffs, deputy sheriffs, undersheriffs and correction officers equal to three-quarters of salary with eligibility based upon injuries sustained by confined individuals and the statutory presumption that tuberculosis, HIV, or hepatitis are work-related diseases. Similar to the version of this bill that was vetoed last year, no empirical evidence has been provided to justify this benefit improvement and concerns remain with respect to maintaining benefits consistent with other law enforcement personnel in the State. It would be more sound public policy to reform the disability benefit structure for law enforcement personnel in a comprehensive and uniform manner based on studies which justify the benefit changes. Accordingly, the Division of the Budget recommends veto of this legislation.

000007



STATE OF NEW YORK  
GOVERNOR'S OFFICE OF EMPLOYEE RELATIONS  
2 Empire State Plaza, Ste 1201  
Albany, New York 12223-1250  
www.goer.state.ny.us

LINDA ANGELLO  
DIRECTOR  
(518) 474-6988

## MEMORANDUM

July 1, 1999

TO: Hon. James M. McGuire  
FROM: Walter J. Pellegrini *WJP*  
SUBJECT: S.3136

The above-mentioned bill would amend the Retirement and Social Security Law by adding a new section 63-b and section 607-c to include a performance of duty disability benefit for employees of a county that are a sheriff, deputy sheriff, undersheriff, or correction officer.

Under this Bill would give a county the option of offering a 3/4 disability retirement to certain specific county employees who are no longer able to perform their jobs as a result of an on-the-job injury. Currently, the law does not provide sheriffs, undersheriffs, deputy sheriffs or correction officers this specific benefit.

The benefit provided to county sheriffs, deputy sheriffs, undersheriffs and correction officers would be the same provided to State correction officers and security hospital treatment assistants by chapter 722 of the Laws of 1996. Furthermore, a county would not be required to offer such a benefit but could so at its own election, following procedures outlined in the Bill.

The Governor's Office of Employee Relations is concerned that contrary to the mandate of Executive Order 96, which established the Task Force on Public Employee Pension Systems, a comprehensive review of the Bill's potential impact on the retirement system was not undertaken. Moreover, there is some question as to whether there is a compelling hardship that would necessitate favorable action in this instance, which is implied by Executive Order 96.

Therefore, the Governor's Office of Employee Relations does not support the signing of this legislation. Thank you for the opportunity to comment on this Bill.

WJP:mnv  
J:\LEGISLATIVE COMMENTS\1999\S3136.wpd

000008

H. CARL McCALL  
STATE COMPTROLLER



A.E. SMITH STATE OFFICE BUILDING  
ALBANY, NEW YORK 12236

STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

July 1, 1999

The Honorable James M. McGuire  
Counsel to the Governor  
Executive Chamber  
State Capitol - Room 225  
Albany, NY 12224

Re: S.3136

Dear Mr. McGuire:

Thank you for requesting our comments regarding the above-captioned bill.

We have reviewed this measure and have no objection to its enactment.

Very truly yours,

A handwritten signature in cursive script that reads "Dixie Hathaway".

Dixie A. Hathaway  
Assistant Deputy Counsel

DAH:dr

000009

**Add. 25**



STATE OF NEW YORK - EXECUTIVE DEPARTMENT  
**STATE COMMISSION OF CORRECTION**

4 TOWER PLACE  
ALBANY, NEW YORK 12203-3764  
(518) 485-2346  
FAX (518) 485-2467

CHAIRMAN/COMMISSIONER  
Alan J. Croce

COMMISSIONERS  
Patricia R. Tappan  
Frederick C. Lamy

June 28, 1999

Hon. James McGuire  
Counsel to the Governor  
Executive Chamber  
State Capitol  
Albany, New York 12224

Re: S.3136: AN ACT to amend the  
retirement and social security law,  
in relation to performance of duty  
disability retirement for certain  
correction officers

Dear Mr. McGuire:

The Commission of Correction has no objection to this bill,  
which adds a new section 63-b of the Retirement and Social Security  
Law regarding performance of duty disability retirement for certain  
correction officers.

Thank you for the opportunity to comment on this bill.

Very truly yours,

Michael F. Donegan  
Special Counsel

000010

TO COUNSEL TO THE GOVERNOR

Re: SENATE 3134

ASSEMBLY

Inasmuch as this bill does not appear to relate to the functions of the Department of Law, I am not commenting thereon. However, if there is a particular aspect of the bill upon which you wish comment, please advise me.

**ELIOT SPITZER**  
**ATTORNEY GENERAL**

Date: *June 22, 1999*

000011



STATE OF NEW YORK  
DEPARTMENT OF CORRECTIONAL SERVICES  
THE HARRIMAN STATE CAMPUS  
1220 WASHINGTON AVENUE  
ALBANY, N.Y. 12226-2050

GLENN S. GOORD  
COMMISSIONER

JOHN R. PATTERSON, JR.  
EXECUTIVE DEPUTY COMMISSIONER

June 30, 1999

Honorable James M. McGuire  
Counsel to the Governor  
Executive Chamber  
State Capitol  
Albany, New York 12224

Re: S3136/A5861

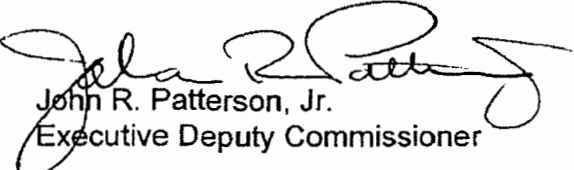
Dear Mr. McGuire:

The aforementioned bill amends the Retirement and Social Security Law in relation to performance of duty disability retirement for certain correction officers.

The Department of Correctional Services has no objection to this bill as proposed.

Thank you for the opportunity to comment.

Very truly yours,

  
John R. Patterson, Jr.  
Executive Deputy Commissioner

JRP/eab

cc: Jill Konviser, Asst. Counsel to the Governor  
Anthony J. Annucci, Dep. Comm. and Counsel

000012

**Add. 28**



**COUNTY OF SUFFOLK**



**OFFICE OF THE COUNTY EXECUTIVE**

**ROBERT J. GAFFNEY**  
COUNTY EXECUTIVE

October 12, 1999

Hon. James M. McGuire  
Counsel to the Governor  
Executive Chamber  
State Capitol  
Albany, New York 12224

Dear Mr. McGuire:

Suffolk County supports the approval of Senate bill 3136, which has passed both houses of the Legislature and will soon be delivered to the Governor for executive action.

This bill would give counties the option to provide sheriffs, undersheriffs, deputy sheriffs and correction officers with a performance of duty disability retirement of 75% of their final average salary in the event that such employee is injured while performing their duties. In addition, it would create a presumption that members covered by this act who are diagnosed with HIV, tuberculosis or hepatitis, contracted the disease while in the line of duty unless proven otherwise.

These employees perform some of the most dangerous duties in our criminal justice system such as arresting, detaining and transporting convicted criminals. Because of their constant exposure to violence, assault, transmissible diseases and other life threatening situations they should be provided with comparable disability protection.

Chapter 722 of the Laws of 1996 granted a performance of duty disability benefit to correction officers employed by the Department of Corrections and security hospital assistants within the Office of Mental Health. This bill would establish parity by extending a similar benefit to county employees that serve in virtually the same capacity as their state counterparts.

Therefore, Suffolk County strongly urges the Governor to approve Senate bill 3136. Thank you for your consideration and attention to this important legislation affecting Suffolk County.

Very truly yours,

ROBERT J. GAFFNEY  
Suffolk County Executive

**000013**



Founded in 1925

**POLICE CONFERENCE** of New York, Inc.  
Union of Police Officers

Executive Offices: 112 State Street—Suite 1120, Albany, New York 12207  
Tel. (518) 463-3283 FAX. (518) 463-2488 [www.pcny.org](http://www.pcny.org)

November 19, 1999

Hon. George E. Pataki, Governor  
The Executive Chamber  
State Capitol  
Albany, NY 12224

MEMO IN SUPPORT - S-3136 (Leibell) - An act to amend the retirement and social security law, in relation to performance of duty disability retirement for certain correction officers

Dear Governor Pataki:

The Police Conference of New York, Inc., founded in 1925, has as its objectives the protection of the interests of police officers, the sponsorship of legislation perceived to be in their best interest, and the giving of aid and assistance to police officers and police organizations. The Police Conference is a highly regarded statewide group that represents the interests of 226 police associations, eight regional police conferences and one retired police association, with a total membership of 25,000.

This legislation would authorize a county to provide a three-quarters performance of duty disability retirement for sheriff, undersheriffs, deputy sheriffs and correction officers and would make those employees who contract HIV, tuberculosis or hepatitis in the performance of duty eligible for that benefit.

On behalf of the members we represent, we support the above entitled legislation and urge your consideration in signing it into law.

Sincerely yours,

Edward W. Guzdek, President

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EWG:cl

AFFILIATED WITH:  
National Association of Police Organizations (NAPO)  
NY Public Employees Conference (PEC)

**Add. 30**

011-634



# Metropolitan Police Conference of New York State, Inc.

Nassau County Office - 89 East Jericho Turnpike, Mineola, NY 11501 / 516-294-6230 / Fax 516-742-0519  
Albany Office - 111 Washington Avenue, Room 406, Albany, NY 12210-2207 / 518-465-1141 / Fax 518-465-3048  
Administrative Office - 48 Oak Street, Floral Park, NY 11001-3410 / 516-355-0749 / Fax 516-355-0752

July 15, 1999

**Gary Dela Raba**  
*President*  
Nassau County PBA

**Gus Danese**  
*1st Vice President*  
Port Authority PBA

**William Diebold**  
*2nd Vice President*  
Lynbrook PBA

**Jeff Frayler**  
*Recording Secretary*  
Suffolk County PBA

**Robert G. Howell**  
*Sergeant at Arms*  
Nassau County  
Detectives Association

**Arthur J. Cliff**  
*Corresponding Secretary*  
Suffolk County  
Superior Officers Association

**Patrick Hall**  
*Treasurer*  
Glen Cove PBA

**Michael Axelrod**  
*Attorney*  
East Meadow, New York

**McEnderney, Brady & Co.**  
*Certified Public Accountants*  
Yonkers, New York

**Harry Kreiness**  
*Public Relations*  
Yonkers, New York

**Rev. Terrence Attridge**  
*Chaplain*

*Legislative Committee*  
**Floyd Holloway**, Director

**Ken Long**, Chairman  
Nassau County PBA

**Steve Allen**  
Nassau County Detectives Association

**Joe Belesi**  
Nassau County SOA

**Gene Crimmins**  
NYC Detectives Endowment Association

**Ray Gimmler**  
Metropolitan Transit Authority PBA

**Ray Griffin**  
Suffolk County Detectives Association

**Chris Heimgartner**  
NYC Lieutenants Benevolent Association

**Bill Holmes**  
Captains Endowment Association

**Hank Mulligan**  
Suffolk County SOA

Suffolk County PBA

Suffolk County SOA

Suffolk County SOA

Suffolk County SOA

Suffolk County SOA

Suffolk County SOA

Suffolk County SOA

Suffolk County SOA

Suffolk County SOA

Suffolk County SOA

Suffolk County SOA

Honorable James McGuire  
Counsel to the Governor  
Executive Chamber  
State Capitol  
Albany, New York 12224

Re: S 3136 - Introduced by Senator Leibell

A 861 - Introduced by Member of the Assembly Vitaliano

AN ACT to amend the retirement and social security law, in relation to accidental disability retirement and performance of duty disability retirement for sheriffs, under-sheriffs, deputy sheriffs and correction officers.

Dear Mr. McGuire:

The Metropolitan Police Conference of New York State, Inc., an organization comprised of more than 50 member units representing more than 40,000 police officers in New York State, strongly supports this legislation which would entitle sheriffs, undersheriffs, deputy sheriffs and correction officers employed by a county who have been granted an accidental disability retirement to receive a retirement allowance of 75 percent of their final average salary. It would also recognize tuberculosis, HIV and hepatitis as a disability incurred in the performance of duty.

The effected class of individuals are often confronted by violent individuals during the performance of their duties. Since they are subject to sustaining permanent injuries, these officers, who are defined as police officers under the Criminal Procedure Law, should have the right to receive accident disability retirements equal to 3/4 of their final average salary (less workers compensation benefits).

Last year, by Chapter 722 of the laws of 1996, New York State Correction Officers and security hospital treatment

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**Add. 31**

assistants were afforded this 75% disability pension. That legislature also established that those who contracted HIV, tuberculosis or hepatitis and were disabled as a consequence, would qualify for a performance of duty disability.

Since we believe that sheriffs, undersheriffs, deputy sheriffs and correction officers face similar risks to those faced by police officers, we believe that this legislation is warranted and should be enacted.

On behalf of our member units, we urge your support in having this legislation signed into law.

Respectfully submitted,

Kenneth Long  
Legislative Chairman

  
Gary Dela Raba  
President

McGuire\_S3136

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**Add. 32**



Port Authority Police  
Detectives Endowment Association, Inc.

J.F.K. AIRPORT STATION  
P.O. BOX 300406  
JAMAICA, N.Y. 11430-00406

06/30/99

Richard Masella  
*President*

Salvatore Schiano  
*1st Vice President*

Charles E. Linden  
*2nd Vice President*

Paul P. Dotzler  
*Treasurer*

Christian Eng  
*Recording Secretary*

Vincent P. Martino  
*Sergeant-At-Arms*

Phil Stephenson  
*Trustee*

Marc N. Isenberg  
William Morrison  
*Union Attorneys*

Governor George Pataki  
Office of the Governor  
Executive Chambers, State Capitol  
Albany, NY 12224

Dear Governor Pataki,

I am writing this letter to urge you to sign into law the following bills regarding important changes to the New York State and Local Police and Fire Retirement System:

S-3688 (Leibell) Tier II status Extender

S-2468-A (Trunzo) Tier II 1 year FAS

S-1656-A (Spano) Tier II Death Gamble

We also ask that you sign the following legislation supported by our Police Organizations:

S887-B	S1494	S1656-A	S2075	S2468-A
S2662	S2698	S2893	S2991	<u>S3136-S</u>
S3158-B	S3688	S3796-A	S3921	S3923
S4470	S4771	S4867-A		
A680	A1269-A	A2332-B	A3563	A4062
A6676-A	A6692-A			

I would also like to thank you for your past support to our Police Organizations.

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Very truly yours,

Richard Masella  
President, DEA

Affiliations: National Association of Police Organizations (NAPO), Police Conference of New York (PCNY),  
Metropolitan Police Conference of New York (METRO), Port Authority Labor Council

**Add. 33**



# WESTCHESTER COUNTY CORRECTION OFFICERS BENEVOLENT ASSOCIATION

370 ELWOOD AVE., SUITE 201  
HAWTHORNE, N.Y. 10532  
TELEPHONE: (914) 773-0436  
FAX: (914) 773-0438



## EXECUTIVE BOARD

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President

**ALFREDO HOLDER**  
1st Vice President

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Regina Fischetti  
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Clyde Hilliard  
D.A. Jones  
D.K. Jones  
Frank Murphy  
Joe Sannella  
Ray Sannella  
Fred Scholl  
Marc Tarczali

## ATTORNEYS

Robert Goodstein  
Eileen West  
56 Harrison Street  
Suite 401  
New Rochelle, N.Y. 10801  
(914) 632-8382

## CHAPLAIN

Rev. Charles Albert

December 3, 1999

The Honorable George Pataki  
Governor  
The State Capitol  
Executive Chamber  
Albany, New York 12224

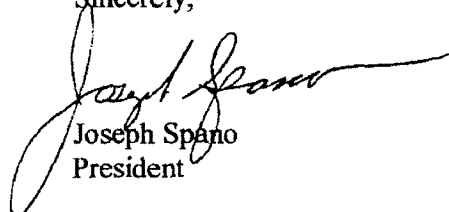
Dear Governor Pataki,

On behalf of the eight hundred men and women who I represent as President of the Westchester County Correction Officers Benevolent Association, I extend a sincere thank you for supporting the statewide, local option,  $\frac{3}{4}$  Disability Bill. (S.3136/A.5861)

Your support and respect for the Correction Officer profession has been recognized and applauded by Correctional organizations across the state. By supporting legislation that is important to Correction Officers and our families, you have provided much needed protections, and helped to elevate Correction Officers in the law enforcement community.

Again, on behalf of the men and women who I represent in Westchester C.O.B.A., thank you.

Sincerely,



Joseph Spano  
President

JS/lr

Cc: United Correction Officers Coalition  
Robert Doherty, C.O.B.A. Lobbyist

000016



# WESTCHESTER COUNTY CORRECTION OFFICERS BENEVOLENT ASSOCIATION

370 ELWOOD AVE., SUITE 201  
HAWTHORNE, N.Y. 10532  
TELEPHONE: (914) 773-0436  
FAX: (914) 773-0438



## EXECUTIVE BOARD

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Marc Tarczall

## ATTORNEYS

Robert Goodstein  
Eileen West  
56 Harrison Street  
Suite 401  
New Rochelle, N.Y. 10801  
(914) 632-8382

## CHAPLAIN

Rev. Charles Albert

October 4, 1999

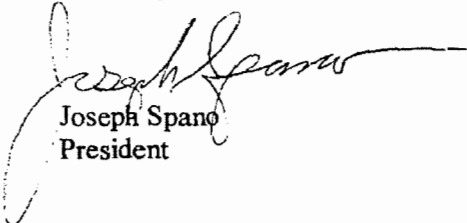
The Honorable James McGuire  
Counsel To The Governor  
The State Capitol  
Executive Chamber  
Albany, New York 12224

To The Honorable James McGuire:

I represent eight hundred men and women who are employed as Correction Officers in Westchester County. It is on their behalf that I ask for your support of Legislative Bill S3136/A5861. This legislation would give counties the option of offering a ¾ disability retirement to Sheriff's, Under Sheriff's, Deputy Sheriff's, and Correction Officers, who are no longer able to perform their duty as a result of an injury sustained on the job. This Bill also encompasses protection relating to transmittable diseases, such as HIV, tuberculosis, or hepatitis. Since Correction Officers work in an extremely dangerous environment, and are constantly exposed to transmittable diseases, this legislation is very important to the eight hundred officers I represent and our families.

On behalf of the Westchester Correction Officers Benevolent Association, I would like to thank you for your time and consideration in addressing this issue.

Sincerely,

  
Joseph Spano  
President

JS/lr

Cc: Senator Vincent Leibel  
Senator Nicholas Spano  
Robert Doherty, C.O.B.A. Lobby **000019**

70 11/30

THE  
CIVIL SERVICE  
EMPLOYEES  
ASSOCIATION, INC.  
LOCAL 1000 • AFSCME • AFL-CIO



Danny Donohue  
PRESIDENT

November 23, 1999

Governor George E. Pataki  
New York State  
Executive Chamber  
Capitol Building  
Albany, New York 12224

Dear Governor Pataki:

I am writing in support of S.3136/A.5861 which provides counties with the option of offering a performance of duty disability retirement package to sheriffs, undersheriffs, deputy sheriffs and correction officers at 3/4 of final average salary.

Sheriffs, deputy sheriffs, undersheriffs and correction officers employed by counties serve in one of the most dangerous jobs in the criminal justice system. These employees are charged with front line law enforcement and the supervision of prisoners in county jails and are constantly exposed to violence, assault, transmissible diseases and other life threatening situations.

The constant risk of injury and the stress of doing this vital job merits this protection. These employees and their families deserve the peace of mind that in the event of a life-threatening injury, their livelihoods will not be jeopardized.

Chapter 722 of the Laws of 1996 granted this same benefit to correction officers employed by the Department of Corrections and security hospital assistants within the Office of Mental Health. County sheriffs, deputy sheriffs, undersheriffs and correction officers serve in the same capacity and house State-ready inmates for lengthy periods of times. They should be entitled to the same benefit as their counterparts in State service.

On behalf of 265,000 active and retired, public and private employees across New York State, CSEA strongly urges your approval of this legislation.

CC0020

In solidarity,

DANNY DONOHUE

DD/rs  
143 Washington Ave., Albany, NY 12210  
518/434-0191







C-639

**SUFFOLK COUNTY CORRECTION OFFICERS ASSOCIATION, INC.**

400 West Main Street, Suite 202 • Riverhead, New York 11901  
(631) 208-1301 • FAX (631) 208-1333

January 4, 2000

**William R. Maggi**  
President

**Vito Dagnello**  
First Vice President

**J.G. Johnson**  
Second Vice President

**Robert Wilenski**  
Third Vice President

**Gary F. Osarczuk**  
Recording Secretary

**Charles J. Sciafani**  
Treasurer

**Michael Polchinski**  
Sergeant-at-Arms

**Meyer, Suozzi, English  
& Klein, P.C.**  
Counsel

**David Rosenberg**  
Corporate Accountant

**Br. Jack Moylan, O.S.F.**  
Chaplain

**Bill Ellis**  
Director of Public Relations

**Hon. George Pataki**  
**The Executive Chamber**  
**State of Albany**  
**Albany, NY 12224**

**Dear Governor Pataki:**

On behalf of county correction officers throughout New York State, I would like to express our appreciation for your signing of bill number ~~K~~<sup>S</sup>3136/~~R~~<sup>A</sup>5861.

This will allow us to negotiate with our home counties to enact a 3/4 disability benefit for correction officers permanently injured while performing their duties.

Very truly yours,

**William R. Maggi**  
**President**  
**SCCOA**  
**Legislative Chairman**  
**United Correction Officers**  
**Coalition**

WRM:lrc

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**SUFFOLK COUNTY CORRECTION OFFICERS ASSOCIATION, INC.**

1500 William Floyd Parkway, 2nd Floor • Shirley, New York 11967-1317  
(516) 924-5456 • FAX (516) 924-5489

July 14, 1999

**William R. Maggi**  
President

**Vito Dagnello**  
First Vice President

**John G. Johnson**  
Second Vice President

**Robert Wilenski**  
Third Vice President

**Gary F. Osarczuk**  
Recording Secretary

**Charles J. Sclafani**  
Treasurer

**Michael Polchinski**  
Sergeant-at-Arms

**Meyer, Suozzi, English  
& Klein, P.C.**  
Counsel

**David Rosenberg**  
Corporate Accountant

**Br. Jack Moylan, O.S.F.**  
Chaplain

**Bill Ellis**  
Director of Public Relations

**The Honorable George Pataki**  
New York State Governor  
Capitol Building  
Albany, NY 12224

Re: S.3136/A.5861

Dear Governor Pataki:


On behalf of the over 700 members of the Suffolk County Correction Officers Association (SCCOA), I urge you to sign Senate bill 3136 Leibell. This legislation would give counties the option of offering strong disability protection to sheriffs, under sheriffs, deputy sheriffs and correction officers should they suffer a career ending illness.

The job of a correction officer is extremely intense, requiring them to perceive and defuse explosive situations. They must withstand, without overreaction, inmate invectives to which they are regularly subjected. They are working closely with inmates, many of whom are HIV positive, have TB, hepatitis or other transmissible diseases.

The duties of a Suffolk County Correction Officer are especially demanding. They work largely in a confined environment with violence-prone, often anti-social inmates who during any work period, outnumber them at least tenfold. These county correction officers face a high rate of on-the-job injury, however, they currently do not share the same disability coverage as the as New York State and New York City Correction Officers. We believe that our members deserve to have this safeguard open to them as well.

We believe that, in the event of a life-threatening illness, our members' livelihoods should not be in jeopardy. For the aforementioned reasons we urge your support for S.3136/A.5861.

Very truly yours,

  
William R. Maggi  
President  
SCCOA

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WRM:lrc

cc: Hon. Robert J. Gaffney  
SCCOA Executive Board  
Barry J. Peck, SCCOA Counsel  
Richard Winsten, Esq.