

McMahon

**LOCAL LAW NO. \_\_\_\_-2014**

**A LOCAL LAW CREATING AN ONONDAGA COUNTY JUSTICE CENTER OVERSIGHT COMMITTEE**

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF ONONDAGA AS FOLLOWS:

**Section 1. Purpose and Intent**

Persons confined to the Onondaga County Justice Center ("Justice Center") are to be treated in a manner consistent with the United States Constitution, and all other laws, rules and regulations. To this end, a Special Legislative Committee shall be established by the Legislature to review incidents that occur in the Justice Center, as well as complaints from inmates and other interested parties, and, further, to make recommendations to the Onondaga County Sheriff ("Sheriff") and the Onondaga County Legislature based on such review. The Committee's review should assist the Legislature to effectively direct resources with the goal of promoting policy, practices and training to prevent future incidents within the Justice Center. Such committee is further intended to provide a mechanism for community members to assist the legislature in furthering this goal.

**Section 2. Establishment and Jurisdiction**

There shall be established an Onondaga County Justice Center Oversight Committee, independent of the Sheriff's Department. The Committee shall investigate and review incidents, and receive, investigate and review complaints that derive from incidents, that occur within the Justice Center, and shall make related findings of fact and recommendations as it deems appropriate to the Sheriff and the Onondaga Legislature.

For the purposes of this law, the Committee shall have access to written reports, records, statements, reviews, audio and video recordings, policies, procedures and training materials of the Sheriff's Department that the Committee determines are necessary for review of a matter within the jurisdiction of the Committee.

For the purposes of this law the Committee, and its Administrator, shall be granted reasonable access to the Justice Center, and to inmates held within the Justice Center, or those inmates temporarily transferred to Jamesville Penitentiary who nevertheless remain under the custody of the Justice Center, and in a manner consistent with law and within reasonable safety procedures and policies of the Sheriff's Department.

For the purposes of this Committee, an incident shall include but not be limited to situations involving:

- Assault (including but not limited to: inmate/inmate, inmate/personnel, inmate/visitor,

personnel/inmate, visitor/inmate, inmate group/gang, and/or visitor assault as described in the Reportable Incident Manual of the New York State Commission of Corrections;

- Sexual Offense (including but not limited to: inmate/inmate, inmate/personnel, inmate/visitor, personnel/inmate, visitor/inmate sexual offenses as described in the Reportable Incident Manual of the New York State Commission of Corrections;
- Serious Injury or death of a prisoner in custody;
- Serious injury or death of Justice Center personnel on the job;
- Inmate Suicide, Attempted Suicide or Self-Inflicted injury requiring medical treatment;
- Inmate Accidental Injury requiring medical treatment;
- Arson or other occurrence of fire within the Justice Center;
- Hostage Situation;
- Use of force against a prisoner by non-SERT personnel;
- Use of force by SERT personnel if a serious injury or death should occur;
- Medical emergency requiring response response from facility medical personnel, response from emergency medical responders from outside the Justice Center, or emergency transport to a facility outside the Justice Center.

For the purposes of this Committee, a complaint shall mean any written report, that alleges harm caused to an inmate while in custody in the Justice Center, harmful conditions of confinement in the Justice Center, or misconduct by Justice Center personnel, including but not limited to allegations of the following:

- Active Misconduct
- Passive Misconduct
- Denial of Medical Treatment related to an injury, or to an acute or chronic condition
- Serious Injuries and Deaths in custody or arising directly from conditions or circumstances of custody
- Suicide and Suicide Attempts in Custody
- Truthfulness in Reporting
- Compliance with Policy Directives and Training
- Access to Medical Evaluation and Treatment
- Assessment, Treatment and Accommodation for Prisoners with Disabilities
- Allegations that Statements or Actions Have Been Motived by Bias
- Use of Excessive Force
- Application of Excessive Penalties, Including But Not Limited to Placement in or Extension of Placement in a Segregated Housing Unit or Lockdown Status for more than 10 days

- Unsanitary or Unsafe Housing Conditions
- Arbitrary or Willful Destruction or Denial of Permitted Personal Property
- Retaliation Against an Inmate or Family Member Subsequent to a Grievance or Complaint Being Made

For the purposes of this law:

**"Active Misconduct"** shall mean behavior which is alleged by any individual to be inappropriately aggressive, abusive, injurious or intrusive, ranging from excessive physical force to harassment and slurs or insults.

**"Passive Misconduct"** shall mean a failure to intervene appropriately, including untimely response, or refusal to provide information about how to file a grievance or complaint, refusal to provide forms required to do so, refusal to notify a superior officer of an inmate's request to file such a grievance or complaint, as well as refusal to provide information about how to seek medical attention or to provide forms required to do so.

**"Serious Injury"** shall mean a personal injury which results in death; dismemberment; disfigurement that is more than superficial; a fracture; loss of or injury to a fetus; temporary or permanent loss of use of a body organ, member, function or system; or a medically determined injury or impairment of a non-permanent nature which either requires extended medical treatment or results in treatment by a medical professional outside the facility, or that prevents the injured person from performing significant material acts which constitute such person's usual and customary daily activities.

**"Excessive force"** shall be defined as physical force used against an inmate beyond that what is reasonably necessary to control, subdue, or restrain an inmate, or physical force used against an inmate beyond what is reasonably necessary to control an inmate after they have been placed in restraints.

### **Section 3. Committee Composition**

- (a) The Committee shall be comprised of nine members, whose minimum age will be eighteen (18) years old at the time of their appointment. A "quorum" of the Committee shall consist of no less than five (5) members, however a vote on matters described in Sections 4, 6 and 7 shall require a simple majority of the entire Committee.
- (b) Members of the Committee shall be residents of Onondaga County and should reflect the County's demographically and geographically diverse community.
- (c) Members of the Committee or members of their immediate family shall not be employed by the Sheriff's Office or any local, state or federal law enforcement agency during the period of service on the Committee.
- (d) Members of the Committee shall not be members of the immediate family of any incumbent elected official of Onondaga County or the City of Syracuse.

- (e) No practicing attorney or member of his or her law firm, or the immediate family of an attorney or member of his or her family who represents a plaintiff or defendant in a Sheriff misconduct lawsuit initiated against the Onondaga County Sheriff's Office or the Sheriff, or a plaintiff or any family member of a plaintiff in such case, shall be a member of the Committee.
- (f) The members of the Committee shall serve without compensation for service on the Committee.

#### **Section 4. Appointment; Term Limits, Vacancy, Removal**

##### **(a) Appointment to the Committee shall be made as follows:**

- (i) Six (6) members shall be recommended by the Chair of the County Legislature for appointment, and confirmed by majority vote of the County Legislature. Two (2) of those members shall have prior experience in law enforcement, and at least two shall be representatives from the Onondaga County community who have experience in civil rights and/or civil liberties issues or advocacy. At least one (1) of the six (6) members recommended for appointment by the Legislature Chair of the County Legislature shall be considered at the suggestion of the minority leader of the County Legislature.
- (ii) Two (2) members shall be recommended by the County Executive and confirmed by a majority vote of the County Legislature.
- (iii) One member shall be recommended by the Mayor of the City of Syracuse and confirmed by majority vote of the County Legislature.

##### **(b) Notice of Vacancy**

Within seven (7) to ten (10) business days, the Committee will provide written notice of Committee vacancies to the Chair of the Legislature as well as to the Majority and Minority Leaders of this body, to the County Executive, and to the Mayor of Syracuse. Within seven (7) to ten (10) subsequent business days, the Committee shall provide public notice of Committee vacancies for the purpose of giving qualified citizens an opportunity to apply for membership, both in the seating of the first full Committee and for all subsequent Committee vacancies as they occur. "Public notice" shall mean information published in a conspicuous manner as to attract citizen attention and interest in the various media outlets, including but not limited to newspapers, television, radio or online.

##### **(c) Removal of members**

Upon good cause or a change in qualifications under Section 3, the Committee, by a simple majority vote of the entire Committee, may request that the Legislature authority act to remove a Committee. Not later than five (5) business days after such Committee vote, the Committee shall provide written notice of such request to the Chair of the Legislature, with copies to the

Majority and Minority Leaders of that body, as well as to the County Executive and the Major of Syracuse .

Should a sitting member of the Committee, come under any of the categories in 3 (b) through 3 (e) above, that member shall promptly notify the Chair of the Committee.

**(d) Terms**

- (i) Members shall be appointed for three year terms. The initial members confirmed by the County Legislature shall have staggered terms as follows: for an initial one year term – one recommended by the County Executive and one by the County Legislature; for an initial two year term – three recommended by the County Legislature; and for an initial three year term – one recommended by the County Executive and two by the County Legislature. Thereafter, appointments shall be made for a full three year term.
- (ii) A term shall start on January 1<sup>st</sup> of the first year of that term and shall end on December 31<sup>st</sup> of the last year of that term. If a person is appointed to complete the unexpired term of a former Committee member, the newly appointed Committee member shall be eligible to be appointed to serve two successive three (3) year terms.
- (iii) In order to provide more people with an opportunity to participate on the Committee, members shall be limited to serving no longer than six consecutive years, but may be reappointed after a break in service of no less than twelve (12) months.
- (iv) Committee members shall continue to serve until their successors have been appointed.

**Section 5. Committee Officers; Duties**

(a) The Committee shall elect a Committee Chair, Vice Chair and Secretary, and such election should occur at the Committee's inaugural meeting and annually thereafter. Such officers should serve in the position for a term of one year. In order to provide more people with an opportunity to participate on the Committee, an individual should not serve in such a position for more than two consecutive terms, but may be re-elected to such position after a break in service of no less than twelve months.

(b) The duties of the Chair shall include, but not be limited to:

- Facilitating Committee meetings;
- Establishing sub-committees as necessary;
- Working with the Committee Administrator on all Committee matters; and
- Any other duties as deemed necessary by the Committee.

(c) The duties of the Vice Chair and Secretary shall be determined by the Committee at the first meeting.

## **Section 6. Committee Administrator**

- (a) There shall be full-time Administrator to be appointed by the County Legislature in accordance with Section 6 (c) below. The Administrator shall be a resident of Onondaga County. The Administrator shall not be employed by the Sheriff's Office or any other local, state or federal law enforcement agency, during the period of service to the Committee, nor shall the Administrator be a member of the immediate family of any incumbent elected official of Onondaga County.
- (b) Within seven (7) to ten (10) business days, of a vacancy in the position of Administrator, public notice shall be made of such a vacancy for the purpose of providing an opportunity to qualified citizens to apply. "Public notice" shall mean published in a conspicuous manner as to attract citizen attention and interest in the various media outlets, including but not limited to newspapers, television, radio or online.
- (c) The following shall participate in the selection of the initial Committee Administrator: the Chair of the County Legislature along with the Majority and Minority Leaders of that body, the Chair of the Legislature's Public Safety Committee, the County Executive or his/her designee and the County Personnel Director or his/her designee. In the process of seeking subsequent Administrators, the members of the Committee shall have the primary responsibility for the screening of candidates for this position, in consultation with the Chair of the County Legislature and its Public Safety Committee on the selection of a final candidate to be recommended for confirmation by majority vote of the County Legislature. The Chair of the Legislature shall place the name of a candidate so selected on the agenda of the next scheduled voting meeting of Legislator for confirmation by majority vote of the County Legislator.
- (d) The Administrator shall be responsible to the Committee, but may be called upon to respond to inquiries from the County Legislature and the County Executive.
- (e) A portion of the Committee, which number shall be determined at the Committee's first meeting, shall have the primary responsibility for oversight and annual review of the performance of the Administrator, and may, if necessary make a recommendation to the Committee for removal of the Administrator for cause. Such portion of the Committee shall work with the Chair of the Legislature, the Chair of the Public Safety Committee and the Minority Leader of the Legislature to create a process for the annual review of the performance of the Administrator.
- (f) The duties of the Administrator shall include, but not be limited to:
- Maintaining the Committee files;
  - Representing the Committee in public settings, meetings and events, and, in consultation with the Committee Chair, in discussions with county officials;
  - Being available to individuals to provide information about the processes of complaint and incident review of the Committee;
  - Preparing the required Committee annual reports;
  - Conducting the investigations of incidents and complaints, in service to the Committee.

- Creating and maintaining any such forms, documents, and processes that may be necessary to carry out the purpose of the Committee;
- Summarizing the findings of complaint and incident investigations for presentation to the Committee and the County Legislature;
- Communicating regularly with the Chair of the Committee, the Chair of the Onondaga County Legislature and the Chair of its Public Safety Committee
- Assisting the Committee with its public education efforts;
- Any other tasks deemed necessary by the Committee.

(g) The County Legislature shall authorize and the County Executive shall provide the Administrator with appropriate office space, phone and computer equipment, a dedicated phone number and voice mail, email account, and website hosting, as well as the essential supplies, budget with technical assistance necessary to establish and support the operations of the Committee.

## **Section 7. Committee Powers and Duties**

### **(a) Meetings**

The Committee shall meet as often as it deems necessary, but in any case not less than ten (10) times per year in the Chairman's Room, located in the Onondaga County Courthouse, 401 Montgomery Street, 4<sup>th</sup> Floor, Syracuse, NY 13202. Meetings shall be open to the public. Committee members may choose to enter into Executive Session to discuss the results of investigation into specific complaints or incidents, or to speak with related witnesses, when such closed session is convened consistent with Open Meetings Law and any other applicable laws.

### **(b) Training for Committee Members**

The Committee shall educate and train its members and Administrator in a manner it deems appropriate. The Sheriff's Department is encouraged to assist the Administrator and Committee in orienting members of the Committee to the Justice Center facility and to its policies and procedures.

### **(c) Public Meetings and Information**

The Committee and its Administrator may hold public meetings as it deems appropriate, but in any case not less than two (2) times per year, where such meetings shall invite public input or comment, and will provide education about the Committee process. At least one meeting shall be held within the City of Syracuse limits.

The Committee and its Administrator shall create and distribute one or more brochures or fliers describing the Committee's mission, contact information, how to submit a complaint, and the Committee's procedures to review incidents and complaints. The Committee shall also work with County officials to place similar information on an appropriate website location.

**(d) Reports**

The Committee and its Administrator will produce at least an annual written report that is published on the Committee website and is made available to the public in writing at meetings of the Committee or otherwise upon written request. Copies of these reports shall be provided to the County Executive, the Sheriff, the Chair of the County Legislature and the Chair of the County Legislature Public Safety Committee. Additional copies of these reports will also be sent to the Mayor of the City of Syracuse and to the President, Majority and Minority leaders of the Syracuse Common Council. Within any such published reports, the Committee shall protect the confidentiality of those persons related to complaints, unless written consent is obtained from each such person. Confidentiality should include redaction of names and identifying individual characteristics, however reports will include summaries of aggregated demographic information where appropriate.

**(e) Receipt of Complaints**

- (i) The Committee and its Administrator shall create and maintain mechanisms for receiving, documenting, and responding to complaints.
- (ii) The Committee and its Administrator shall consider complaints submitted in writing by Justice Center inmates, or other interested parties, including an inmate's legal representatives or family members, representatives of community groups, or County officials and employees working in the Justice Center.
- (iii) Complaints may be accepted by the Committee Administrator at any time, however the Committee may exercise its own discretion to refuse consideration of complaints that are two or more years old.
- (iv) Copies of all complaints accepted by the Administrator shall be sent to the Sheriff or his/her designee, and to the County Attorney or his/her designee, within five (5) business days after receipt by the Administrator.
- (v) The Committee and its Administrator shall establish a standard complaint form with clear instructions for completion, including the provision of a notarized signature, and for submission of the form to the Committee and its Administrator. The Committee shall accept notarized complaints whether submitted using this complaint form or through other written format. The Committee may accept complaints transmitted via fax, mail, or email or received by hand-delivery, however the Administrator shall take steps to confirm the identity of a complainant who submits a complaint using a format other than the standardized compliant form created by the Committee.

**(f) Investigation of Incidents & Complaints; Obtaining Documents & Materials for Use in Pursuing Such Investigations**



- (i) The Committee and its Administrator shall create mechanisms for documenting the investigation of complaints it receives and incidents that are brought to its attention, and for reviewing the results of such investigations.
- (ii) The Committee and its Administrator shall immediately cease its investigation or review of a complaint or incident upon receipt of a written request from the County Attorney, which shall be based on the initiation of a lawsuit or receipt of a notice of claim by a related complainant as per Section 50-e of the General Municipal Law of New York State.
- (iii) The Committee or its Administrator shall pursue investigation of complaints received and of incidents that come to their attention, utilizing investigatory techniques including, but not limited to, interviewing complainants and witnesses, examining recorded audio or video, and reviewing all policies, procedures and reports the Committee or its Administrator deems to be relevant.
- (iv) The Committee or its Administrator shall seek to obtain documents it deems relevant for use in its investigation and review of a complaint or incident, including but not limited to recordings, including audio and visual formats, and written documents, including reports, records, statements, reviews, training materials, and policies and procedures of the Sheriff's Department. The Committee, its Chair or its Administrator shall make a formal written request for copies of such recordings and documents from the Sheriff or the designated records custodian for the Sheriff's Department, and such documents shall be disclosed in a manner consistent with law, where such laws include applicable provisions of the New York State Public Officers Law and Civil Rights Law Section 50-a. The Sheriff or his/her designee is strongly encouraged to acknowledge to the Committee in writing that they have received that request, taken steps to preserve such recordings or documents, and provide an estimate of the time by which requested documents or recordings will be provided to the Committee. If the Sheriff or his/her designee declines to provide any such documents or recordings requested by the Committee, within 12 business days after the receipt of such request, the Sheriff or his/her designee is strongly encouraged to provide a written explanation to the Committee of the reason why one or more documents or recordings will not be provided along with the legal basis for withholding such documents or recordings.
- (v) The Committee shall comply with any statutory requirements for maintaining the confidentiality of documents and information received by the Committee in the course of its duties.
- (vi) The Committee may, by a simple majority vote of the entire Committee, request that the County Legislature act to issue a subpoena for recordings or written documents held by County officials or employees, or compelling the appearance of a specified person at a specified meeting of the Committee, as the Committee deems necessary for the Committee's investigation and review of an incident or complaint. Prior to said vote the Committee shall document that the Committee or its Administrator have made a formal written request for copies of such recordings and documents from the appropriate custodian. Not later than five (5) business days after such Committee vote, the

Committee will provide written notice of such request to the Chair of the County Legislature, who may either issue the subpoena or refer such matter to the Chair of the County Legislature's Public Safety Committee with a request for prompt action. A copy of any subpoena served upon an individual member of any department of city or county government shall also be delivered to the designated head of that department. All county department heads should promulgate new rules, or to utilize existing rules, to ensure compliance with such a subpoena in accordance with applicable law.

**(g) Committee Findings of Fact & Recommendations**

- (i) The Committee shall create a mechanism for reviewing incidents and complaints, considering the results of investigations, and for making findings of fact as well as any recommendations on policy, procedure, or training.
- (ii) Deliberations of the Committee necessary to make a finding of fact and generate related recommendations shall be confidential and shall not be open to the public. Such deliberations shall not be recorded verbatim by any means or method.
- (iii) The Committee shall utilize the substantial evidence standard of proof when making a finding of fact, and voting on findings of fact and recommendations shall be conducted as described in Section 3 (a).
- (iv) After review of a complaint or incident, the Committee shall make a finding of fact about the circumstances relating to an incident or complaint under review.
- (v) After the Committee has made a finding of fact, the Committee shall also make recommendations as deemed appropriate about policies, procedures, practices or other systematic concerns existing at the Justice Center. Such Committee recommendations may address matters of policy, procedure and training aimed to prevent future occurrences and to improve policies, procedures and training within the Justice Center, and may seek to identify and make recommendations related to patterns and systemic issues.
- (vi) Within any such recommendations, the Committee shall protect the confidentiality of those persons related to complaints, unless written consent is obtained from such person. Confidentiality should include redaction of names and identifying individual characteristics, however recommendations can include summaries of aggregated demographic information where appropriate.
- (viii) The Committee or Committee Administrator shall take steps to notify complainants of findings of fact and any related recommendations in writing within 10 business days of the Committee's final vote in relation to their complaint. The Committee shall subsequently provide copies of any such recommendations to the Sheriff, County Executive, Chair of the Onondaga County Legislature, Chair of the Onondaga County Legislature's Public Safety Committee, as well as the Majority and Minority Leaders of the Legislature.

- (ix) No action of the Committee shall preclude action by the judicial system, nor a complainant's ability to pursue other available avenues of administrative or legal redress. No finding of fact or recommendation of the Committee shall have any collateral effect upon a subsequent administrative or judicial proceeding. Additionally, the Committee or its Administrator shall make this clear to each complainant upon accepting a complaint, and also upon communicating the findings and recommendations of the Committee.

### **Section 8. Cooperation of County Officials**

- (a) Nothing herein shall be read or construed to abolish, transfer, or curtail the power and duties of any elected official. Further, nothing herein shall be read or construed to alter any rights of employees under any applicable agreement or statute.
- (b) County officials shall use good faith efforts to cooperate with the Committee and its Administrator and shall comply with any applicable laws. Such cooperation should include providing the Committee with requested documents and recordings and allowing the Committee and its Administrator reasonable access to the Justice Center to conduct investigations, and to the Jamesville Penitentiary to speak to inmates who are temporarily transferred to this facility but remain under the official custody of the Justice Center.
- (c) Heads of County Departments whose staff work or are present in the jail on a regular basis are strongly encouraged to designate a liaison from their department to the Committee to act as a resource to the Committee on matters of information regarding related policies, procedures and training, and to meet periodically with the Administrator and Chair of the Committee as requested or on a mutually agreed upon schedule.
- (d) County officials and employees should promptly make reports and/or complaints to the Committee of alleged misconduct and incidents falling within the Committee's jurisdiction. County officials and employees should make all efforts to ensure the preservation of related recordings and documents.
- (e) When the Sheriff, Undersheriff, Chief of the Jail or the Commander of the Office of Professional Standards within the Sheriff's Department learns of an incident that may fall within the jurisdiction of the Committee, the Sheriff or his designee is strongly encouraged to provide written notice of this incident to the Administrator of the Committee within five (5) business days, and make all efforts to ensure the preservation of related recordings and documents.
- (f) County officials should receive and review recommendations of the Committee and take such action as may be appropriate in response to such recommendations. Any such County official should communicate with the Committee and its Administrator in a timely manner regarding actions to be taken in response to such recommendations. In particular, the Sheriff is strongly encouraged to advise the Committee in writing within thirty (30) days of receipt of a recommendation from the Committee as to what types of actions he/she or his designed has taken, the timing of actions planned for the future, and the reasons if no actions were or will be taken. The Sheriff or his designee is also strongly encouraged to provide a copy of

any such communication to the Chair of the Onondaga County Legislature, the Chair of its Public Safety Committee, and to the Majority and Minority Leaders of the Legislature.

### **Section 9. Retaliation Prohibited**

No County official or employee shall retaliate in any way against an inmate, family member, or other interested party for making a complaint to the Committee or otherwise participating in any way with the Committee's investigation or review of an incident or complaint.

No county official or employee shall be retaliated against for making a report or complaint as in Section 8 (d) above, or engaging in communication with the Committee or its Administrator in the course of their investigation or review of an incident or complaint within the jurisdiction of the Committee.

### **Section 10. Legislature Review of Reports and Recommendations from the Committee**

The Administrator shall, in consultation with the Committee Chair, communicate regularly to the Chair of the Onondaga Legislature and the Chair of its Public Safety Committee. Such communications shall include, but shall not be limited to reporting of findings of fact and recommendations in relation to both incidents and complaints.

Upon receiving any reports from the Committee that includes recommendations related to policy, procedure, and training, as well as any related responses received from the Sheriff's Department, the Legislature Chair shall request that the Chair of the Legislature Public Safety Committee place a related item or items on the agenda of the next meeting of the Public Safety Committee, and the content of such discussions will be included in the minutes of this Committee.

### **Section 11. Severability.**

If any clause, sentence, paragraph, section or part of this local law shall be adjudged by a court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which the judgment shall have been rendered.

### **Section 12. Effective Date.**

This Local Law shall take effect 90 days after its enactment. Complaints will not be accepted until such date. Investigation and review of incidents and complaints within the jurisdiction of this Committee shall commence no more than 60 days after an Administrator is hired, or within 120 days after enactment of this legislation, whichever date comes first.

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