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COUNTY OF ERIE

MICHAEL A. SIRAGUSA
COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

May 14, 2015

Hon. Karen McCarthy
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York, 14202

Re: Local Law No. 2-2015
Our File No.: 22-20150009

Dear Hon. McCarthy:

Enclosed please find an original of the above-referenced Local Law for filing in your office.

Thank you.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: _____
Gregory P. Kammer
Assistant County Attorney

GPK/ncd
Enclosure

95 FRANKLIN STREET – ROOM 1634, BUFFALO, NEW YORK 14202– PHONE (716) 858-2200 – FAX (716)858-2281 (NOT FOR SERVICE)
WWW.ERIE.GOV

New York State Department of State
Division of Corporations, State Records and Uniform Commercial Code
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231-0001
www.dos.ny.gov

Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

☒ **County** ☐ **City** ☐ **Town** ☐ **Village**
(Select one:)

of Erie

Local Law No. 2 **of the year 20** 15

A local law in relation to the establishment of an Erie County Conditional Release Commission
(Insert Title)

Be it enacted by the Erie County Legislature **of the**
(Name of Legislative Body)

☒ **County** ☐ **City** ☐ **Town** ☐ **Village**
(Select one:)

of Erie **as follows:**

Section 1: Legislative Intent

The purpose of this law is to establish a Conditional Release Commission in compliance with New York State Correction Law, Article 12. It is hereby declared to be the public policy of Erie County to adhere to New York State Laws that enable counties to establish a Local Conditional Release Commission that is responsible for determining who may be conditionally released, when they may be released, and under what conditions. It is the purpose of this local law to improve public safety by reducing the incidence of crime by assisting offenders with successful integration into the community while providing a continuing measure of protection to society.

Section 2: Establishment and Membership

There is hereby established an Erie County Conditional Release Commission, hereafter called the Commission. The Commission shall consist of five members to be appointed by the County Executive upon the advice and consent of the County Legislature.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

The Commission will have the authority to offer "conditional release" after serving 90 days of the sentence to local jail inmates serving a sentence of one year or less.

1. Each member of the Commission shall have graduated from an accredited four year college or university and shall have had at least five years of experience in the field of criminology, administration of criminal justice, law enforcement, probation, parole, law, social work, social science, psychology, psychiatry, or corrections.

2. The term of office of each member of such Commission shall be for four years; provided, however, that any member chosen to fill a vacancy occurring otherwise than by expiration of term shall be appointed for the remainder of the unexpired term of the member whom the person is to succeed. Vacancies caused by expiration of term or otherwise shall be filled in the same manner as original appointments.

3. No member of the Commission shall serve as a representative of any political party on an executive committee or other governing body thereof, as an executive officer or employee of any political committee, organization, or association, nor be a judge or justice, a sheriff or district attorney.

4. Any member may be removed by the County Executive for cause, after notice and an opportunity to be heard.

5. The Commissioner of the Erie County Department of Probation, or such commissioner's designee, shall serve as an ex-officio, non-voting member of the Commission.

6. The Erie County Department of Probation shall assign staff support to the Commission.

Section 3: Powers and Duties of the Commission

The Commission shall:

1. Have the power and duty of determining which persons sentenced within the county, and serving a definite sentence of imprisonment and eligible for conditional release pursuant to subdivision two of section 70.40 of the penal law may be released on conditional release and when and under what conditions in accordance with section 273 of the New York State Correction Law;

2. Have the power to determine, as each inmate applies for conditional release, the need for supplemental investigation of the background of such inmate and cause such investigation as may be necessary to be made as soon as practicable. The Commission may require that the Erie County Department of Probation conduct such supplemental investigation. The

results of such investigation together with all other information compiled by the local correctional facility and the complete criminal record and family court record of such inmate shall be readily available when the conditional release of such inmate is being considered. Such information shall include a complete statement of the crime for which the inmate is being considered, the circumstances of such crime, all pre-sentence memoranda, the nature of the sentence, the court in which such inmate was sentenced, the name of the judge and district attorney and copies of such probation reports as may have been made as well as reports as to the inmate's social, physical, mental, and psychiatric condition and history;

3. Have the legal custody of persons conditionally released and placed under the supervision of the Erie County Department of Probation for a period of one year, or until returned to the custody of the Erie County Sheriff, as the case may be;

4. Have the power to revoke the conditional release of any person in the legal custody of the Commission and to issue declarations of delinquency and authorize the issuance of a warrant for the re-taking of such person, as provided for in section two hundred seventy-four of the New York State Correction Law;

5. For the purpose of any investigation necessary in the performance of its duties, have the power to issue subpoenas, to compel the attendance of witnesses and the production of books, papers, and other documents pertinent to the subject of its inquiry

6. Upon establishment of the Commission, members shall meet within one month to adopt procedures for the review of applications for early release and hold monthly meetings to review applications submitted by inmates seeking to participate in the conditional release program. The minutes of all Commission meetings must be digitally audio recorded and minutes must be transcribed and manually recorded. Such records shall be retained according to applicable standards;

7. Have the power to authorize any members thereof to administer oaths and take the testimony of persons under oath;

8. Notify, in writing, the initial sentencing court, the district attorney and defense counsel within five business days of receipt of an application for a local conditional release filed under this article and provide a fifteen day period for comment on such application. Comments submitted under this subdivision shall be provided to the Commission and all parties;

9. Notify in writing the Erie County Department of Probation prior to release of a conditionally released person of such department's responsibilities to supervise such person. Such notice shall include the name and residence of the person, the date of release, the conditions of release, and all necessary records maintained on such person to aid the local probation department in the performance of its responsibilities;

10. Have the power to transfer the legal custody of persons conditionally released in accordance with New York State Correction Law;

11. Present an annual report to the Erie County Legislature, or its findings and actions on submitted applications.

Section 4: Severability

If any clause, sentence, paragraph, subdivision, section or part of this law shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof but shall be confirmed in its operation to the clause, sentence, paragraph, subdivision, section or part of this law.

Section 5: Effective Date

This local law shall become effective upon filing with the Secretary of State.

Sponsored By:

Legislator Barbara Miller-Williams
Legislator Betty Jean Grant Legislator
Patrick B. Burke

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, in accordance with the applicable *(Name of Legislative Body)*
provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)
I hereby certify that the local law annexed hereto, designated as local law No. 2 of 20 15 of the (County)[redacted] of Erie was duly passed by the Erie County Legislature on April 30 20 15, and was (approved)[redacted] *(Name of Legislative Body)*
[redacted] by the Erie County Executive and was deemed duly adopted *(Elective Chief Executive Officer*)*
on May 12, 20 15, in accordance w ith the applicable provisions of law.

3. (Final adoption by referendum.)
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) *(Name of Legislative Body)*
(repassed after disapproval) by the _____ on _____ 20____. *(Elective Chief Executive Officer*)*

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 20____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) *(Name of Legislative Body)*
(repassed after disapproval) by the _____ on _____ 20____. Such local *(Elective Chief Executive Officer*)*
law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)
I hereby certify that the local law annexed hereto, designated as local law No._____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20____, became operative.

6. (County local law concerning adoption of Charter.)
I hereby certify that the local law annexed hereto, designated as local law No._____ of 20____ of the County of _____State of New York, having been submitted to the electors at the General Election of November _____ 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)
I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 2 above.

Karen M. McCarthy
Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

(Seal)

Date: 5/14/15

A Public Hearing was held on the foregoing Local Law Intro. No. 7-2 2014 on May 12, 2015 due notice thereof having been published in the official newspapers of the County of Erie designated for this purpose, and after due deliberation thereon, I, MARK C. POLONCARZ, County Executive of Erie County, do hereby APPROVE and SIGN said Local Law this 12 day of May, 2015.

Mark C. Poloncarz

A Public Hearing was held on the foregoing Local Law Intro. No. 7-2 2014 on May 12, 2015 due notice thereof having been published in the official newspapers of the County of Erie designated for this purpose, and after due deliberation thereon, I, MARK C. POLONCARZ, County Executive of Erie County, do hereby DISAPPROVE and VETO said Local Law this ____ day of May, 2015.

Mark C. Poloncarz