

6711--A

I N S E N A T E

January 29, 2010

Introduced by Sens. MONTGOMERY, ADAMS, DUANE, HASSELL-THOMPSON, KRUEGER, ONORATO, PARKER, SAVINO, SCHNEIDERMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law and the county law, in relation to alternative to detention programs for court-involved children

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 530 of the executive law, as amended by chapter
2 880 of the laws of 1976, subdivisions 2 and 5 as amended by chapter 920
3 of the laws of 1982, subdivision 2-a and subparagraph 4 of paragraph (a)
4 of subdivision 5 as added and paragraph (a) of subdivision 4 as amended
5 by chapter 419 of the laws of 1987, the closing paragraph of subdivision
6 2-a and subdivision 7 as amended by chapter 465 of the laws of 1992,
7 paragraph (c) of subdivision 4 as added by chapter 169 of the laws of
8 1994, subdivision 8 as added by section 1 and subdivision 9 as added by
9 section 2 of part C of chapter 83 of the laws of 2002, is amended to
10 read as follows:

11 S 530. Reimbursement for detention. 1. Definitions. (A) As used in
12 this section, the terms "local charge" and "state charge" shall have the
13 meaning ascribed to them in the social services law.

14 (B) "ALTERNATIVE TO DETENTION" AND "ALTERNATIVE TO RESIDENTIAL PLACE-
15 MENT" PROGRAMS SHALL MEAN COMMUNITY-BASED HIGH QUALITY PROGRAMS THAT:

16 (1) PROVIDE OR FACILITATE SUPPORT FOR MENTAL HEALTH DISORDERS,
17 SUBSTANCE ABUSE PROBLEMS AND LEARNING DISABILITIES;

18 (2) PROVIDE POST-RELEASE SUPPORT WITHIN THE YOUTH'S COMMUNITY;

19 (3) ARE CAPABLE OF REPLICATION ACROSS MULTIPLE SITES;

20 (4) OFFER DEVELOPMENTALLY-APPROPRIATE, FAMILY-FOCUSED, STRENGTH-BASED
21 AND CULTURALLY COMPETENT SERVICES;

22 (5) HAVE DEMONSTRATED, OR IN THE JUDGMENT OF THE OFFICE WILL DEMON-
23 STRATE, HIGH EFFECTIVENESS AT REDUCING RECIDIVISM; AND

24 (6) HAVE DEMONSTRATED, OR IN THE JUDGMENT OF THE OFFICE WILL DEMON-
25 STRATE, SUSTAINED, LIFE-CHANGING OUTCOMES FOR PARTICIPATING YOUTH.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD15200-04-0

2. Expenditures made by social services districts in providing care, maintenance and supervision to youth in detention facilities designated pursuant to sections seven hundred twenty-four and 305.2 of the family court act and certified by the [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES, shall be subject to reimbursement by the state upon approval by the [division] OFFICE in accordance with its regulations, as follows:

(1) the full amount expended by the district for care, maintenance and supervision of state charges;

(2) fifty percent of the amount expended for the care, maintenance and supervision of [local] YOUTH WHO ARE NOT STATE charges where counties conform with requirements of subdivision B of section two hundred eighteen-a of the county law.

(3) SIXTY-FIVE PERCENT OF THE AMOUNT EXPENDED FOR THE CARE, MAINTENANCE AND SUPERVISION OF YOUTH WHO ARE NOT STATE CHARGES WHERE COUNTIES CONFORM WITH REQUIREMENTS OF SUBDIVISION D OF SECTION TWO HUNDRED EIGHTEEN-A OF THE COUNTY LAW. A SOCIAL SERVICES DISTRICT THAT ESTABLISHES A PROGRAM WHICH CONFORMS WITH THE REQUIREMENTS OF SECTION TWO HUNDRED EIGHTEEN-A OF THE COUNTY LAW SHALL BE ELIGIBLE FOR A PROSPECTIVE REIMBURSEMENT OF FUNDS EXPENDED ON ESTABLISHMENT OF SUCH PROGRAM, PURSUANT TO REGULATIONS PROMULGATED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES.

(4) IN COMPUTING REIMBURSEMENT TO THE SOCIAL SERVICES DISTRICTS PURSUANT TO THIS SECTION, THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL INSURE THAT THE AGGREGATE OF STATE AID UNDER ALL STATE AID FORMULAS SHALL NOT EXCEED FIFTY PERCENT OF THE COST OF CARE, MAINTENANCE AND SUPERVISION PROVIDED DETAINEES, EXCLUSIVE OF FEDERAL AID FOR SUCH PURPOSES.

(5) IN COMPUTING REIMBURSEMENT TO THE SOCIAL SERVICES DISTRICTS FOR ALTERNATIVES TO DETENTION PROGRAMS, THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL INSURE THAT THE AGGREGATE OF STATE AID UNDER ALL STATE AID FORMULAS SHALL NOT EXCEED SIXTY-FIVE PERCENT OF THE COST OF CARE, MAINTENANCE AND SUPERVISION PROVIDED DETAINEES, EXCLUSIVE OF FEDERAL AID, STATE GRANTS AND THE FUNDS ALLOCATED PURSUANT TO PARAGRAPH THREE OF THIS SUBDIVISION.

2-a. Expenditures made by the city of New York in providing care, maintenance and supervision to youth detained pursuant to article seven of the family court act in foster care facilities approved by the [state department of social services] OFFICE OF CHILDREN AND FAMILY SERVICES shall be subject to reimbursement by the state upon the approval of the [division] OFFICE, as follows:

(1) the full per diem rate set by the [state department of social services] OFFICE OF CHILDREN AND FAMILY SERVICES for such programs for the care, maintenance and supervision of state charges;

(2) fifty percent of the per diem rate set by the [state department of social services] OFFICE OF CHILDREN AND FAMILY SERVICES for such programs for the care, maintenance and supervision of [local] YOUTH, OTHER THAN STATE charges.

Notwithstanding the provisions of this subdivision, section three hundred ninety-eight-a of the social services law shall not apply to facilities certified by the [division] OFFICE pursuant to section five hundred three of this chapter.

3. Wherever detention services are not provided directly or indirectly by a social services district, the district shall act as the intermediary between the [division] OFFICE and the agency lawfully providing such services, for the purpose of claiming and receiving reimbursement,

furnishing financial information and obtaining approval for reserved accommodations pursuant to this section.

4. (a) The social services districts must notify the [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES of state aid received under other state aid formulas by each detention facility, and, in the city of New York, by each foster care facility which is providing care, maintenance and supervision for which the district is seeking reimbursement pursuant to this section, including but not limited to, aid for education, probation and mental health services.

(b) In computing reimbursement to the social services districts pursuant to this section, the [division] OFFICE OF CHILDREN AND FAMILY SERVICES shall insure that the aggregate of state aid under all state aid formulas shall not exceed fifty percent of the cost of care, maintenance and supervision provided detainees, exclusive of federal aid for such purposes.

(c) Reimbursement for administrative related expenditures as defined by the [director of the division for youth] COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES, for secure and nonsecure detention services shall not exceed seventeen percent of the total approved expenditures for facilities of twenty-five beds or more and shall not exceed twenty-one percent of the total approved expenditures for facilities with less than twenty-five beds.

5. (a) Except as provided in paragraph (b) of this subdivision, care, maintenance and supervision for the purpose of this section shall mean and include only:

(1) temporary care, maintenance and supervision provided alleged juvenile delinquents and persons in need of supervision in detention facilities OR ALTERNATIVE TO DETENTION PROGRAMS certified pursuant to sections seven hundred twenty-four and 305.2 of the family court act by the [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES, pending adjudication of alleged delinquency or alleged need of supervision by the family court, or pending transfer to institutions to which committed or placed by such court or while awaiting disposition by such court after adjudication or held pursuant to a securing order of a criminal court if the person named therein as principal is under sixteen; or,

(2) temporary care, maintenance and supervision provided juvenile delinquents and persons in need of supervision in approved detention facilities AND ALTERNATIVE TO DETENTION PROGRAMS at the request of the [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES pending release revocation hearings or while awaiting disposition after such hearings; or

(3) temporary care, maintenance and supervision in approved detention facilities OR ALTERNATIVE TO DETENTION PROGRAMS for youth held pursuant to the family court act or the interstate compact on juveniles, pending return to their place of residence or domicile.

(4) temporary care, maintenance and supervision provided youth detained in the city of New York in foster care facilities OR ALTERNATIVE TO DETENTION PROGRAMS pursuant to article seven of the family court act.

(b) Payments made for reserved accommodations, whether or not in full time use, approved by the [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES and certified pursuant to sections seven hundred twenty-four and 305.2 of the family court act, in order to assure that adequate accommodations will be available for the immediate reception and proper care therein of youth for which detention costs are reimbursable pursuant to paragraph (a) of this subdivision, shall be reimbursed

1 as expenditures for care, maintenance and supervision of [local] YOUTH
2 OTHER THAN STATE charges under the provisions of this section, provided
3 the [division] OFFICE shall have given its prior approval for reserving
4 such accommodations.

5 6. The [director of the division for youth] COMMISSIONER OF THE OFFICE
6 OF CHILDREN AND FAMILY SERVICES may adopt, amend, or rescind all rules
7 and regulations, subject to the approval of the director of the budget
8 and certification to the chairmen of the senate finance and assembly
9 ways and means committees, necessary to carry out the provisions of this
10 section.

11 7. Expenditures made by the [division for youth] OFFICE OF CHILDREN
12 AND FAMILY SERVICES in providing care, maintenance and supervision to
13 youth in secure detention facilities certified pursuant to sections
14 seven hundred twenty-four and 305.2 of the family court act and estab-
15 lished, operated and maintained by the [division for youth] OFFICE,
16 pursuant to section five hundred three of this article, shall be subject
17 to reimbursement by the social services district to the state, in
18 accordance with [division] OFFICE regulations, as follows: fifty percent
19 of the amount expended by the [division] OFFICE for the care, mainte-
20 nance and supervision of [local] YOUTH OTHER THAN STATE charges, AND
21 THIRTY-FIVE PERCENT OF THE AMOUNT EXPENDED BY THE OFFICE FOR THE CARE,
22 MAINTENANCE, AND SUPERVISION OF YOUTH OTHER THAN STATE CHARGES IN AN
23 ALTERNATIVE TO RESIDENTIAL PLACEMENT PROGRAM.

24 8. The office of children and family services shall develop a method-
25 ology to assess the need for new juvenile detention facility capacity,
26 which shall apply to the issuance of an operating certificate. The
27 office of children and family services shall promulgate regulations no
28 earlier than March first, two thousand four to utilize such needs
29 assessment and supporting material provided by the agency administering
30 detention for each county and for the city of New York as a criterion
31 for new juvenile detention facility capacity. Such regulations shall not
32 govern the licensing of foster care facilities in the city of New York
33 that are used to detain persons in need of supervision. The office of
34 children and family services shall provide the agency administering
35 detention in each county, the city of New York, detention providers, the
36 New York state office of court administration and child welfare advo-
37 cates the opportunity for formal consultation and comment on the devel-
38 opment of both the needs methodology and the regulations implementing
39 such methodology. Notwithstanding any provisions of law to the contrary,
40 the office of children and family services shall not adopt the regu-
41 lations developed pursuant to this subdivision, by emergency rule.
42 Denial of a detention operating certificate based upon such needs
43 assessment shall be subject to the appeal process set forth in regu-
44 lation. From the effective date of this subdivision until the new regu-
45 lations are promulgated, the office of children and family services may
46 deny a request for certification of additional capacity for non-secure
47 detention if the utilization rate in the applicable county or area has
48 been less [then] THAN eighty percent on average over a three year period
49 or a request for certification of additional capacity for secure
50 detention if the utilization rate has been less than eighty-five percent
51 on average over a three year period, unless health and safety or other
52 extraordinary circumstances exist. Any such denial shall be subject to
53 the appeal process set forth in the existing regulations.

54 9. The agency administering detention for each county and the city of
55 New York shall submit to the office of children and family services, in
56 such form and manner as required by the office of children and family

1 services, a quarterly report on youth remanded pursuant to article three
2 or seven of the family court act who are detained for forty-five days or
3 more in any twelve month period. Such report shall include, but not be
4 limited to: the reason for the court's determination in accordance with
5 section 320.5 or seven hundred thirty-nine of the family court act to
6 detain the youth; the offense or offenses with which the youth is
7 charged; and all other reasons why the youth remains detained. Detention
8 agencies shall submit each quarterly report to the office within thirty
9 days of the end of the quarter and the office shall submit a compilation
10 of all of the separate reports for the quarter to the governor and the
11 legislature within forty-five days of the end of the quarter. The first
12 quarterly report shall cover the last quarter of two thousand two.

13 10. THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL PROMULGATE REGU-
14 LATIONS WHICH WILL BE USED TO DETERMINE THE REQUIREMENTS FOR CERTIF-
15 ICATION OF ALTERNATIVE TO DETENTION OR ALTERNATIVE TO RESIDENTIAL PLACE-
16 MENT PROGRAMS, AND THEIR ELIGIBILITY FOR REIMBURSEMENT UNDER THIS
17 SECTION. THESE REGULATIONS SHALL BE DEVELOPED AFTER CLOSE CONSULTATION
18 WITH THE COMMISSIONER OF PROBATION, THE OFFICE OF COURT ADMINISTRATION,
19 THE OFFICE OF ALCOHOL AND SUBSTANCE ABUSE SERVICES, THE OFFICE OF MENTAL
20 HEALTH, AND ORGANIZATIONS WHICH PROVIDE PUBLICLY FUNDED DEFENSE SERVICES
21 FOR YOUTH WHO HAVE BEEN ACCUSED OF A CRIME.

22 11. THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL DEVELOP, IN
23 FORMAL CONSULTATION WITH THE OFFICE OF COURT ADMINISTRATION, THE COMMIS-
24 SIONER OF PROBATION, THE OFFICE OF ALCOHOL AND SUBSTANCE ABUSE SERVICES,
25 THE OFFICE OF MENTAL HEALTH, SEVERAL ORGANIZATIONS WHICH PROVIDE PUBLIC-
26 LY FUNDED DEFENSE SERVICES FOR YOUTH WHO HAVE BEEN ACCUSED OF A CRIME, A
27 SCREENING AND ASSESSMENT TOOL FOR DETERMINING APPROPRIATE JUVENILE
28 JUSTICE DETENTIONS SERVICES AND PLACEMENTS FOR YOUTH.

29 S 2. Section 218-a of the county law, as amended by chapter 880 of the
30 laws of 1976, the opening paragraph of subdivision A as amended by chap-
31 ter 465 of the laws of 1992, paragraphs 1, 2, 3 and 4 of subdivision A
32 as amended by chapter 555 of the laws of 1978, subdivision B as amended
33 by chapter 419 of the laws of 1987, and subdivision C as added by
34 section 12 of part E of chapter 57 of the laws of 2005, is amended to
35 read as follows:

36 S 218-a. County detention facilities for juvenile delinquents and
37 persons in need of supervision. A. To assure that suitable and conven-
38 iently accessible accommodations and proper and adequate detention in
39 secure and non-secure detention facilities, as defined in section five
40 hundred two of the executive law and the regulations of the [division
41 for youth] OFFICE OF CHILDREN AND FAMILY SERVICES, will be available
42 when required for the temporary care, maintenance and security of
43 alleged and convicted juvenile offenders, alleged and adjudicated juve-
44 nile delinquents and alleged and adjudicated persons in need of super-
45 vision. Such regulations shall not require any county to provide tempo-
46 rary care in a secure detention facility for residents of any other
47 county except upon a space available basis. The county executive, if
48 there be one, otherwise the board of supervisors shall designate the
49 agency of county government responsible for the administration of the
50 county juvenile detention program and shall so advise the [New York
51 state division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES, and
52 may make provisions therefor as follows:

53 1. Provide for the continued operation of the county's established
54 detention facility, so long as it complies with regulations of the
55 [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES, and is
56 certified by that [division] OFFICE.

1 2. PROVIDE FOR THE ESTABLISHMENT OR CONTINUED OPERATION OF COMMUNITY
2 BASED ALTERNATIVE TO DETENTION PROGRAMS, AS DEFINED IN SECTION FIVE
3 HUNDRED THIRTY OF THE EXECUTIVE LAW, THAT COMPLY WITH THE REGULATIONS OF
4 THE OFFICE OF CHILDREN AND FAMILIES, AND ARE CERTIFIED BY THAT OFFICE.

5 [2] 3. Authorize a contract between its county and one or more other
6 counties, which is or are operating a conveniently accessible detention
7 facility OR ALTERNATIVE TO DETENTION PROGRAM certified by the [division
8 for youth] OFFICE OF CHILDREN AND FAMILY SERVICES and in compliance with
9 regulations of [the division for youth] THAT OFFICE, providing for the
10 reception, temporary accommodation and care in such facility of alleged
11 or adjudicated juvenile delinquents and persons in need of supervision
12 held for or at the direction of its family court, for and in consider-
13 ation of the payments to be made therefor, on a per capita basis, pursu-
14 ant to the terms of such contract.

15 [3] 4. Authorize a contract between its county and one or more other
16 counties providing for the joint ESTABLISHMENT, operation and mainte-
17 nance by them of an already established county detention facility OR
18 ALTERNATIVE TO DETENTION PROGRAM certified by the [state division for
19 youth] OFFICE OF CHILDREN AND FAMILY SERVICES and operated and main-
20 tained in compliance with the regulations of [the division for youth]
21 THAT OFFICE, which is conveniently accessible to the counties concerned.
22 Such authorization and contract may include provisions for remodeling or
23 enlarging the building of such facility.

24 [4] 5. Authorize a contract between its county and one or more other
25 counties providing for the joint establishment, operation and mainte-
26 nance by such counties of a new joint county detention facility which
27 shall be located on a site conveniently accessible to the counties
28 concerned and which shall be certified by the [state division for youth]
29 OFFICE OF CHILDREN AND FAMILY SERVICES and which shall be established,
30 operated and maintained in compliance with the regulations of the [divi-
31 sion for youth] OFFICE.

32 [5] 6. The resolution providing for joint action under [three or]
33 SUBDIVISION four OR FIVE [above] OF THIS SECTION shall be adopted by the
34 board of supervisors of each of the several counties affected, and a
35 committee composed of at least one member of each of such boards shall
36 be created to acquire the necessary real property in the name of the
37 counties affected, and as the joint agent of such counties such commit-
38 tee shall have charge of the construction, equipment, maintenance and
39 operation of such joint county detention facility OR ALTERNATIVE TO
40 DETENTION PROGRAM and, with the advice of an advisory committee consist-
41 ing of the judge of the family court and the commissioner of social
42 services of each of said counties, shall supervise and control the main-
43 tenance and operation of such joint county detention facility OR ALTER-
44 NATIVE TO DETENTION PROGRAM. The said resolution may specify the
45 matters as to which the action of such committee shall require the joint
46 approval of the boards of supervisors of all the counties affected and
47 shall prescribe the proportions to be borne by each of the several coun-
48 ties affected of the costs of acquisition of the site and of
49 construction of a new joint county detention facility and the
50 proportions to be borne by each of the several counties affected of the
51 costs of operation of such joint county detention facility OR ALTERNA-
52 TIVE TO DETENTION PROGRAM, whether established by new joint acquisition
53 and construction or by utilization of an existing county detention
54 facility. The moneys to pay the share to be borne by each county
55 affected shall be provided by appropriation in such amounts and at such
56 times as may be agreed upon.

1 B. Notwithstanding any other provision of law, each board of supervi-
2 sors shall provide or assure the availability of conveniently accessible
3 and adequate non-secure detention facilities, certified by the [state
4 division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES, as resources
5 for the family court in the county pursuant to articles seven and three
6 of the family court act, to be operated in compliance with the regu-
7 lations of the [division for youth] OFFICE OF CHILDREN AND FAMILY
8 SERVICES for the temporary care and maintenance of alleged and adjudi-
9 cated juvenile delinquents and persons in need of supervision held for
10 or at the direction of a family court.

11 C. Each county shall offer diversion services to children who are at
12 risk of being the subject of a petition under article seven of the fami-
13 ly court act. Such services shall be designed to provide an immediate
14 response to families in crisis and to identify and utilize appropriate
15 alternatives to juvenile detention.

16 D. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EACH BOARD OF SUPERVI-
17 SORS OR COUNTY EXECUTIVE MAY PROVIDE OR ASSURE THE AVAILABILITY OF
18 CONVENIENTLY ACCESSIBLE AND ADEQUATE ALTERNATIVE TO DETENTION PROGRAMS
19 CERTIFIED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES ACCORDING TO
20 SECTION FIVE HUNDRED THIRTY OF THE EXECUTIVE LAW, AS RESOURCES FOR THE
21 FAMILY COURT IN THE COUNTY PURSUANT TO ARTICLES SEVEN AND THREE OF THE
22 FAMILY COURT ACT, TO BE OPERATED IN COMPLIANCE WITH THE REGULATIONS OF
23 SUCH OFFICE FOR THE TEMPORARY CARE AND MAINTENANCE OF ALLEGED AND ADJU-
24 DICATED JUVENILE DELINQUENTS AND PERSONS IN NEED OF SUPERVISION HELD FOR
25 OR AT THE DIRECTION OF A FAMILY COURT.

26 S 3. This act shall take effect immediately and shall be deemed to
27 have been in full force and effect on and after April 1, 2010.