S T A T E O F N E W Y O R K

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I N A S S E M B L Y

February 17, 2009

Introduced by M. of A. V. LOPEZ, PERRY, PRETLOW -- Multi-Sponsored by -- M. of A. CLARK, P. RIVERA -- read once and referred to the Committee on Children and Families

AN ACT to amend the executive law, the county law, the family court act, the social services law and the New York city charter, in relation to home detention programs for juveniles

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

Section 1. Subdivision 3 of section 502 of the executive law, as added by chapter 465 of the laws of 1992, is amended to read as follows:

3. (A) "Detention" means the temporary care and maintenance of youth held [away from their homes] pursuant to article three or seven of the family court act, or held pending a hearing for alleged violation of the conditions of release from [a division] AN OFFICE OF CHILDREN AND FAMILY SERVICES facility or authorized agency, or held pending a hearing for alleged violation of the condition of parole as a juvenile offender, or held pending return to a jurisdiction other than the one in which the youth is held, or held pursuant to a securing order of a criminal court if the youth named therein as principal is charged as a juvenile offender or held pending a hearing on an extension of placement or held pending transfer to a facility upon commitment or placement by a court. Only alleged or convicted juvenile offenders who have not attained their eighteenth birthday shall be subject to detention [in a detention facility] PURSUANT TO THIS ARTICLE. "DETENTION" ALSO MEANS THE TEMPORARY SUPERVISION AND PROVISION OF SERVICES IN A HOME DETENTION PROGRAM ESTABLISHED PURSUANT TO THIS SECTION TO ELIGIBLE YOUTH, AS DEFINED IN THIS SECTION, HELD PURSUANT TO ARTICLE THREE OR SEVEN OF THE FAMILY COURT ACT EXCEPT, IN THE CASE OF THE CITY OF NEW YORK, PURSUANT TO ARTICLE THREE OF THE FAMILY COURT ACT.

(B) (I) "HOME DETENTION PROGRAM" MEANS A PROGRAM IN WHICH, BY ORDER OF THE FAMILY COURT, AN ELIGIBLE YOUTH, AS DEFINED IN THIS SECTION, IS

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

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RELEASED TO HIS OR HER PARENT, GUARDIAN OR CUSTODIAN UNDER THE SUPERVISION OF THE GOVERNMENT AGENCY RESPONSIBLE FOR THE ADMINISTRATION OF JUVENILE DETENTION, OR THE AGENCY OPERATING THE HOME DETENTION PROGRAM, PENDING ADJUDICATION, DISPOSITION, OR PLACEMENT. THE FAMILY COURT SHALL NOT ORDER A YOUTH TO BE RELEASED TO A HOME DETENTION PROGRAM UNLESS THE AGENCY ADMINISTERING JUVENILE DETENTION OR OPERATING THE HOME DETENTION PROGRAM HAS MADE A RECOMMENDATION TO THE COURT THAT SUCH YOUTH PARTICIPATE IN SUCH A PROGRAM. THE AGENCY ADMINISTERING JUVENILE DETENTION OR OPERATING THE HOME DETENTION PROGRAM SHALL SUPERVISE AND PROVIDE SERVICES TO YOUTH IN THE HOME DETENTION PROGRAM AND SHALL REQUIRE SUCH YOUTH TO ADHERE TO CERTAIN RULES AS CONDITIONS OF PARTICIPATION IN A HOME DETENTION PROGRAM. THE AGENCY ADMINISTERING JUVENILE DETENTION OR OPERATING THE HOME DETENTION PROGRAM SHALL REPORT TO THE FAMILY COURT ANY BREACH OF THE CONDITIONS OF PARTICIPATION IN A HOME DETENTION PROGRAM AND THE FAMILY COURT SHALL DETERMINE WHETHER THE YOUTH MAY CONTINUE TO PARTICIPATE IN THE HOME DETENTION PROGRAM.

(II) FOR THE PURPOSES OF A HOME DETENTION PROGRAM, "ELIGIBLE YOUTH" MEANS A YOUTH DETERMINED BY THE AGENCY ADMINISTERING JUVENILE DETENTION OR OPERATING A HOME DETENTION PROGRAM TO POSSESS CERTAIN QUALIFICATIONS, INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING:

(1) THE YOUTH HAS BEEN REMANDED TO A DETENTION FACILITY;

(2) THE YOUTH IS DEEMED BY SUCH AGENCY TO POSE A MINIMAL RISK TO THE COMMUNITY;

(3) THE YOUTH IS DEEMED BY SUCH AGENCY TO BE UNLIKELY TO FAIL TO APPEAR IN COURT WHEN REQUIRED; AND

(4) THE PARENT, GUARDIAN OR CUSTODIAN OF THE YOUTH AGREES TO ASSUME RESPONSIBILITY FOR THE YOUTH.

UPON A DETERMINATION THAT A YOUTH POSSESSES ALL SUCH QUALIFICATIONS, THE AGENCY ADMINISTERING JUVENILE DETENTION OR OPERATING THE HOME DETENTION PROGRAM MAY MAKE A RECOMMENDATION TO THE FAMILY COURT THAT SUCH YOUTH PARTICIPATE IN SUCH A PROGRAM.

(III) "CONDITIONS OF PARTICIPATION IN A HOME DETENTION PROGRAM" MEANS CONDITIONS SET BY THE AGENCY ADMINISTERING JUVENILE DETENTION OR OPERATING THE HOME DETENTION PROGRAM OR BY THE FAMILY COURT WHICH, IF NOT MET, MAY, AT THE DISCRETION OF THE FAMILY COURT, RESULT IN A REMAND TO A DETENTION FACILITY. CONDITIONS OF PARTICIPATION SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING:

(1) THAT THE YOUTH ATTEND A SCHOOL OR ALTERNATE SCHOOL PROGRAM ON A REGULAR BASIS WHEN SCHOOL IS IN SESSION;

(2) THAT THE YOUTH LIVE WITH HIS OR HER PARENT, GUARDIAN OR CUSTODIAN;

(3) THAT THE YOUTH AVOID CRIMINAL AND DELINQUENT BEHAVIOR; AND

(4) THAT THE YOUTH PARTICIPATE IN SERVICES PROVIDED BY THE AGENCY ADMINISTERING JUVENILE DETENTION OR OPERATING THE HOME DETENTION PROGRAM.

S 2. Subdivisions 2, 3 and 4 of section 503 of the executive law, as amended by chapter 465 of the laws of 1992, are amended to read as follows:

2. To assure that adequate, suitable and conveniently accessible accommodations and proper care will be available when required for detention, the [division] OFFICE OF CHILDREN AND FAMILY SERVICES may contract for or establish, operate, maintain and certify secure and non-secure detention facilities AND ESTABLISH, OPERATE, MAINTAIN AND APPROVE HOME DETENTION PROGRAMS if funds shall have been made available for the lease or purchase and maintenance and operation of appropriate facilities AND PROGRAMS.

3. Each social services district may establish, operate and maintain secure and non-secure detention facilities AND HOME DETENTION PROGRAMS for the purposes defined in section five hundred two of this article. Each [such] detention facility AND HOME DETENTION PROGRAM ESTABLISHED PURSUANT TO THIS SECTION shall be established, operated and maintained in compliance with this article and the regulations of the [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES.

4. The [division] OFFICE OF CHILDREN AND FAMILY SERVICES shall visit and inspect all facilities used for detention and make periodic reports of the operation and adequacy of such facilities, and the need for provision of such facilities to the county executive, if there be one, the county legislature and the family court judges of the county in which such facilities are located, and the office of court administration. THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL ALSO MONITOR THE OPERATION OF HOME DETENTION PROGRAMS ESTABLISHED PURSUANT TO THIS SECTION. SUCH MONITORING SHALL NOT INCLUDE VISITS TO A HOME DETENTION PROGRAM PARTICIPANT'S RESIDENCE WITHOUT THE PRESENCE OF AN EMPLOYEE OF THE AGENCY ADMINISTERING JUVENILE DETENTION OR OPERATING HOME DETENTION. THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL MAKE PERIODIC REPORTS OF THE OPERATION AND ADEQUACY OF HOME DETENTION PROGRAMS AND THE NEED FOR PROVISION OF SUCH PROGRAMS TO THE COUNTY EXECUTIVE, IF THERE BE ONE, THE COUNTY LEGISLATURE AND THE FAMILY COURT JUDGES OF THE COUNTY IN WHICH SUCH PROGRAMS ARE LOCATED, AND THE OFFICE OF COURT ADMINISTRATION. The department of [social services] FAMILY ASSISTANCE shall cooperate with the [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES to make arrangements for joint visitation, MONITORING and inspection of foster care programs certified by the department of [social services] FAMILY ASSISTANCE and serving youth detained, in cities having a population of one million or more, pursuant to article seven of the family court act.

S 3. Section 503 of the executive law is amended by adding a new subdivision 9 to read as follows:

9. STATEMENTS MADE BY THE RESPONDENT OR THE RESPONDENT'S FAMILY MEMBERS TO EMPLOYEES OF THE AGENCY ADMINISTERING OR OPERATING A HOME DETENTION PROGRAM SHALL NOT BE TRANSMITTED OR OTHERWISE COMMUNICATED TO THE PRESENTMENT AGENCY OR BE ADMISSIBLE IN ANY FACT-FINDING HEARING CONVENED PURSUANT TO PART FOUR OF ARTICLE THREE OF THE FAMILY COURT ACT.

S 4. Subdivision 2 of section 530 of the executive law, as amended by chapter 920 of the laws of 1982, is amended to read as follows:

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, AND FOR SUPERVISION OF AND PROVISION OF SERVICES TO YOUTH IN HOME DETENTION PROGRAMS APPROVED BY THE 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 charges where counties conform with requirements of subdivision B of section two hundred eighteen-a of the county law;

(3) THE FULL AMOUNT EXPENDED BY THE DISTRICT FOR SUPERVISION OF AND PROVISION OF SERVICES TO STATE CHARGES IN HOME DETENTION PROGRAMS;

(4) FIFTY PERCENT OF THE AMOUNT EXPENDED FOR THE SUPERVISION OF AND PROVISION OF SERVICES TO LOCAL CHARGES IN HOME DETENTION PROGRAMS WHERE COUNTIES CONFORM WITH REQUIREMENTS OF SUBDIVISION B OF SECTION TWO HUNDRED EIGHTEEN-A OF THE COUNTY LAW.

S 5. Subdivision 4 of section 530 of the executive law, as amended by chapter 880 of the laws of 1976, paragraph (a) as amended by chapter 419 of the laws of 1987 and paragraph (c) as added by chapter 169 of the laws of 1994, is amended to read as follows:

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 HOME DETENTION PROGRAM WHICH IS PROVIDING SUPERVISION AND SERVICES FOR WHICH THE DISTRICT IS SEEKING REIMBURSEMENT PURSUANT TO THIS SECTION, AND 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 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 IN SECURE AND NONSECURE DETENTION FACILITIES, OR FIFTY PERCENT OF THE COST OF SUPERVISION OF AND PROVISION OF SERVICES PROVIDED TO DETAINEES IN HOME DETENTION PROGRAMS, 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.

S 6. Subparagraph 1 of paragraph (a) of subdivision 5 of section 530 of the executive law, as amended by chapter 920 of the laws of 1982, is amended to read as follows:

(1) temporary care, maintenance and supervision provided alleged juvenile delinquents and persons in need of supervision in detention facilities 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, AND IN HOME DETENTION PROGRAMS APPROVED BY THE 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,

S 7. Section 530 of the executive law is amended by adding a new subdivision 10 to read as follows:

10. SUPERVISION AND PROVISION OF SERVICES FOR THE PURPOSES OF THIS SECTION SHALL MEAN AND INCLUDE ONLY TEMPORARY SUPERVISION OF AND PROVISION OF SERVICES TO ALLEGED JUVENILE DELINQUENTS IN HOME DETENTION PROGRAMS APPROVED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES, PENDING ADJUDICATION OF ALLEGED DELINQUENCY BY THE FAMILY COURT, OR PENDING TRANSFER TO INSTITUTIONS TO WHICH YOUTHS HAVE BEEN PLACED BY SUCH COURT, OR WHILE AWAITING DISPOSITION BY SUCH COURT AFTER ADJUDICATION.

S 8. The opening paragraph of subdivision A of section 218-a of the county law, as amended by chapter 465 of the laws of 1992, is amended to read as follows:

To assure that suitable and conveniently accessible accommodations and proper and adequate detention in secure and non-secure detention facilities AND IN HOME DETENTION PROGRAMS, as defined in section five hundred two of the executive law and the regulations of the [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES, will be available when required for the temporary care, maintenance and security of alleged and convicted juvenile offenders, alleged and adjudicated juvenile delinquents and alleged and adjudicated persons in need of supervision. Such regulations shall not require any county to provide temporary care in a secure detention facility for residents of any other county except upon a space available basis. The county executive, if there be one, otherwise the board of supervisors shall designate the agency of county government responsible for the administration of the county juvenile detention program and shall so advise the [New York state division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES, and may make provisions therefor as follows:

S 9. Subdivision 3 of section 301.2 of the family court act, as amended by chapter 465 of the laws of 1992, is amended to read as follows:

3. "Detention" means the temporary care and maintenance of children away from their own homes AND THE TEMPORARY SUPERVISION OF AND PROVISIONS OF SERVICES TO CHILDREN HELD IN A HOME DETENTION PROGRAM, as defined in section five hundred two of the executive law AND SUBDIVISION EIGHTEEN OF THIS SECTION. Detention of a person alleged to be or adjudicated as a juvenile delinquent shall be authorized only in a facility certified AS A DETENTION FACILITY, OR IN A HOME DETENTION PROGRAM APPROVED by the [division for youth as a detention facility] OFFICE OF CHILDREN AND FAMILY SERVICES pursuant to section five hundred three of the executive law.

S 10. Section 301.2 of the family court act is amended by adding a new subdivision 18 to read as follows:

18. "HOME DETENTION PROGRAM" MEANS THE TEMPORARY SUPERVISION OF AND PROVISION OF SERVICES TO CHILDREN AS DEFINED IN SECTION FIVE HUNDRED TWO OF THE EXECUTIVE LAW.

S 11. Section 304.1 of the family court act is amended by adding a new subdivision 5 to read as follows:

5. WHERE A CHILD IS IN DETENTION, THE COURT MAY ORDER THE CHILD DETAINED IN A HOME DETENTION PROGRAM, PURSUANT TO SUBDIVISION THREE OF SECTION FIVE HUNDRED TWO OF THE EXECUTIVE LAW, UPON THE RECOMMENDATION OF THE GOVERNMENT AGENCY ADMINISTERING JUVENILE DETENTION OR THE AGENCY OPERATING THE HOME DETENTION PROGRAM.

S 12. Subdivisions 1 and 2 of section 350.1 of the family court act, subdivision 1 as amended by chapter 398 of the laws of 1983 and subdivision 2 as amended by chapter 926 of the laws of 1982, are amended to read as follows:

1. If the respondent is detained and has not been found to have committed a designated felony act the dispositional hearing shall commence not more than ten days after the entry of an order pursuant to subdivision one of section 345.1 OF THIS ARTICLE, except as provided in [subdivision] SUBDIVISIONS three AND FOUR OF THIS SECTION.

2. In all other cases, the dispositional hearing shall commence not more than fifty days after entry of an order pursuant to subdivision one

of section 345.1 OF THIS ARTICLE, except as provided in [subdivision] SUBDIVISIONS three AND FOUR OF THIS SECTION.

S 13. Section 350.1 of the family court act is amended by adding a new subdivision 6 to read as follows:

6. IF THE RESPONDENT IS DETAINED PURSUANT TO SECTION 301.2 OF THIS ARTICLE IN A HOME DETENTION PROGRAM, THE DISPOSITIONAL HEARING SHALL COMMENCE NOT MORE THAN TWENTY DAYS AFTER ENTRY OF AN ORDER PURSUANT TO SUBDIVISION ONE OF SECTION 345.1 OF THIS ARTICLE, EXCEPT AS PROVIDED IN SUBDIVISIONS THREE AND FOUR OF THIS SECTION.

S 14. Subdivision (b) of section 712 of the family court act, as amended by chapter 465 of the laws of 1992, is amended to read as follows:

(b) "Detention". The temporary care and maintenance of children [away from their own homes] as defined in section five hundred two of the executive law.

S 15. Section 712 of the family court act is amended by adding a new subdivision (j) to read as follows:

(J) "HOME DETENTION PROGRAM". THE TEMPORARY SUPERVISION OF AND PROVISION OF SERVICES TO CHILDREN AS DEFINED IN SECTION FIVE HUNDRED TWO OF THE EXECUTIVE LAW.

S 16. Subdivision 3 of section 720 of the family court act, as amended by chapter 419 of the laws of 1987, is amended to read as follows:

3. Detention of a person alleged to be or adjudicated as a person in need of supervision shall be authorized only in a detention facility certified OR A HOME DETENTION PROGRAM APPROVED by the [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES except as provided in subdivision four of this section.

S 17. Subdivision 12 of section 153 of the social services law, as amended by section 13 of part C of chapter 83 of the laws of 2002, is amended to read as follows:

12. Expenditures made by a social services district for the detention in foster care facilities AND HOME DETENTION PROGRAMS of a person alleged to be or adjudicated as a person in need of supervision, pursuant to article seven of the family court act, shall be subject to reimbursement by the state in accordance with the provisions of section five hundred thirty of the executive law. The care of such person shall not be required to comply with the requirements of sections four hundred nine-e and four hundred nine-f of this chapter.

S 18. Subdivision 12 of section 153 of the social services law, as added by chapter 419 of the laws of 1987, is amended to read as follows:

12. Expenditures made by a social services district for the detention in foster care facilities AND HOME DETENTION PROGRAMS of a person alleged to be or adjudicated as a person in need of supervision, pursuant to article seven of the family court act, shall be subject to reimbursement by the state in accordance with the provisions of section five hundred thirty of the executive law. The care of such person shall not be required to comply with the requirements of sections four hundred nine-e and four hundred nine-f[, nor be subject to the provisions of section one hundred fifty-three-d or three hundred ninety-eight-b] of this chapter.

S 19. Section 677 of the New York city charter is amended by adding a new subdivision b-1 to read as follows:

B-1. ESTABLISH, INITIATE, CONTROL, MAINTAIN AND OPERATE HOME DETENTION PROGRAMS FOR THE SUPERVISION OF AND PROVISION OF SERVICES TO CHILDREN ALLEGED TO BE OR ADJUDICATED AS JUVENILE DELINQUENTS IN DETENTION AS DEFINED IN SECTION FIVE HUNDRED TWO OF THE EXECUTIVE LAW,

S 20. This act shall take effect immediately; provided, however, that the amendments to subdivision 12 of section 153 of the social services law made by section seventeen of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 28 of part C of chapter 83 of the laws of 2002, as amended, when upon such date the provisions of section eighteen of this act shall take effect.