

4792

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. MONTGOMERY -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the executive law, in relation to defining a bill of rights for juveniles in the juvenile justice system

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

1 Section 1. The legislature finds and declares that research based on
2 national data from 2000 has shown that up to eighty percent of juveniles
3 in juvenile justice systems have a nexus to substance abuse: 18.2
4 percent are under the influence of alcohol or drugs while committing
5 their offenses, 53.9 percent test positive for drugs at the time of
6 arrest, 12.1 percent are arrested for committing an alcohol or drug
7 offense, 62.5 percent report having substance abuse problems, and many
8 exhibit some combination of these characteristics; while forty-four
9 percent of arrested juveniles meet clinical criteria for substance use
10 disorder requiring medical treatment, only 3.6 percent of arrested juve-
11 nile offenders with substance abuse and addiction problems receive any
12 form of substance abuse treatment according to the National Center on
13 Addiction and Substance Abuse (CASA); while up to seventy-five percent
14 of all incarcerated juveniles have some diagnosable mental health disor-
15 der, mental health services remain scarce; that incarcerated juveniles
16 have an increased need for basic and special education, but they are
17 progressively left behind in systems that use uncredentialed teachers,
18 crowded and inadequate facilities and which fail to create an educa-
19 tional environment conducive to learning and development; that juveniles
20 who drink and use drugs are more likely to be arrested multiple times,
21 with each conviction raising the likelihood of the juvenile being proc-
22 essed through adult court and subject to an eventual adult felony
23 conviction, and such juveniles recidivate faster with more serious
24 offenses than those retained in juvenile court; and that a substantial

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

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1 percentage of adults in prison for felony crimes were incarcerated as
2 juveniles.

3 The legislature further finds and declares that, with comprehensive
4 screening, the needs of juveniles can be identified and appropriate care
5 provided while maintaining the safety of the community; and that, with
6 appropriate care, juvenile offenders will recidivate less, and can
7 become productive, healthy and law-abiding members of society. The
8 legislature therefore declares that the provisions of this act are
9 necessary to protect the public health, safety and general welfare. The
10 necessity in the public interest for the provisions hereinafter enacted
11 is hereby declared as a matter of legislative determination.

12 S 2. This act shall be known and may be cited as the "protect our
13 children in the juvenile justice system act".

14 S 3. The executive law is amended by adding a new section 511 to read
15 as follows:

16 S 511. BILL OF RIGHTS FOR YOUTHS IN THE JUVENILE JUSTICE SYSTEM. 1.
17 ALL YOUTHS IN THE SYSTEM HAVE THE FOLLOWING RIGHTS:

18 (A) RIGHT TO REHABILITATION: IN THE HANDLING OF EACH JUVENILE CASE,
19 THE STATE SHALL USE ITS BEST EFFORTS TO REHABILITATE THE YOUTH, IN
20 FURTHERANCE OF WHICH, A COMPREHENSIVE ASSESSMENT SHALL BE MADE OF EACH
21 YOUTH'S SUBSTANCE USE, MEDICAL AND MENTAL HEALTH, EDUCATION AND FAMILY
22 ISSUES THAT MAY BE LINKED TO THE DELINQUENCY;

23 (B) RIGHT TO TREATMENT: ALL YOUTHS IN THE SYSTEM HAVE THE RIGHT TO
24 EFFECTIVE, EVIDENCE-BASED TREATMENT SERVICES FOR SUBSTANCE ABUSE PROB-
25 LEMS AND DISORDERS AS WELL AS HEALTH (MEDICAL, MENTAL, DENTAL) ISSUES,
26 BASED ON THE MANDATED COMPREHENSIVE ASSESSMENT OF THEIR NEEDS, AND
27 PROVIDED BY TRAINED PROFESSIONALS;

28 (C) RIGHT TO EDUCATION: ALL YOUTHS IN THE SYSTEM HAVE THE RIGHT TO A
29 PUBLIC EDUCATION, INCLUDING SPECIAL EDUCATION WHERE NEEDED, THAT MEETS
30 CRITERIA AS ESTABLISHED BY THE STATE EDUCATION DEPARTMENT; THE CREDITS
31 ISSUED FOR THIS COURSEWORK MUST BE CREDITED BY PUBLIC SCHOOL DISTRICTS
32 AND DIPLOMAS AWARDED FOR CREDIT COMPLETION BY THE CHILD'S HOME PUBLIC
33 SCHOOL DISTRICT AS DETERMINED BY PERMANENT ADDRESS;

34 (D) RIGHT TO FAMILY AND SOCIAL SERVICES: ALL YOUTHS IN THE SYSTEM HAVE
35 THE RIGHT TO SERVICES TO IMPROVE FAMILY AND SOCIAL FUNCTIONING;

36 (E) RIGHT TO LEAST RESTRICTIVE ALTERNATIVES: ALL YOUTHS IN THE SYSTEM
37 SHALL BE ENTITLED TO THE LEAST RESTRICTIVE MEANS APPROPRIATE TO THEIR
38 INDIVIDUAL CASES THROUGHOUT THEIR CONTACT WITH THE JUVENILE JUSTICE
39 SYSTEM. AT NO TIME SHALL A YOUTH BE SUBJECT TO MORE RESTRICTIVE MEANS
40 THAN HIS OR HER CASE OTHERWISE WARRANTS IN ORDER TO SECURE APPROPRIATE
41 SERVICES;

42 (F) RIGHT TO REINTEGRATION: ALL YOUTHS IN THE SYSTEM HAVE THE RIGHT TO
43 BE PROVIDED WITH APPROPRIATE AFTERCARE TO SUPPORT SUCCESSFUL REENTRY
44 INTO THE COMMUNITY THAT INCORPORATES A CONTINUITY OF CARE FROM PLACEMENT
45 THROUGH RELEASE. EACH CHILD ENTERING STATE CARE POST-ADJUDICATION WILL
46 HAVE A PLAN INDIVIDUALLY DEVELOPED FOR HIM OR HER BASED ON THE COMPRE-
47 HENSIVE ASSESSMENT. THERE SHALL BE PERIODIC REASSESSMENTS AT LEAST EVERY
48 ONE HUNDRED TWENTY DAYS. THIS PLAN SHALL CONTINUE UNINTERRUPTED THROUGH-
49 OUT THE STATE'S CARE OF THE CHILD, INCLUDING DURING PROBATION, AND
50 AFTERCARE RELEASE;

51 (G) RIGHT TO NON-DISCRIMINATION: ALL YOUTHS IN THE SYSTEM HAVE THE
52 RIGHT TO HAVE ALL DETERMINATIONS IN THEIR CASES MADE WITHOUT REGARD TO
53 RELIGION, RACE, NATIONAL ORIGIN, ETHNICITY, GENDER OR SEXUAL ORIEN-
54 TATION;

55 (H) RIGHT TO SAFETY AND SECURITY: ALL YOUTHS IN THE SYSTEM HAVE THE
56 RIGHT TO BE HOUSED IN SAFE, DEDICATED JUVENILE FACILITIES, TO BE KEPT

1 FREE FROM ANY FORM OF ABUSE, INCLUDING PROTECTION FROM DISPROPORTIONATE
2 MEANS AND THE USE OF FORCE;

3 (I) RIGHT TO COUNSEL: ALL YOUTHS IN THE SYSTEM HAVE THE RIGHT TO FREE,
4 COMPETENT COUNSEL AT ALL STAGES OF PROCEEDINGS;

5 (J) RIGHT TO PROTECTION FROM SELF-INCRIMINATION: ALL YOUTHS IN THE
6 SYSTEM HAVE THE RIGHT TO APPROPRIATE SAFEGUARDS AGAINST SELF-INCRIMINA-
7 TION, INCLUDING THE VESTING IN THE YOUTH OF A PRIVILEGE FOR ANY STATE-
8 MENT BY THE YOUTH GIVEN IN FURTHERANCE OF TREATMENT OR ASSESSMENT FOR
9 TREATMENT;

10 (K) RIGHT TO EVIDENCE-BASED PRACTICE: THE STATE SHALL TRACK AND EVALU-
11 ATE THE EFFECTIVENESS OF TREATMENT AND ASSESSMENTS OVER TIME TO ENSURE
12 THAT THE MEANS EMPLOYED ARE SCIENTIFICALLY SUPPORTED AND IMPROVED; AND

13 (L) RIGHT TO SPEEDY REVIEW: ALL YOUTHS IN THE SYSTEM HAVE THE RIGHT TO
14 HAVE THEIR CASES PROCESSED FAIRLY AND QUICKLY.

15 2. NONE OF THE FOREGOING RIGHTS SHALL ABRIDGE OR ABROGATE ANY OTHER
16 RECOGNIZED RIGHTS, ENTITLEMENTS OR PRIVILEGES ENJOYED BY THOSE IN WHOM
17 THESE RIGHTS ARE VESTED.

18 3. EACH DIVISION FACILITY HOUSING OR PROVIDING SERVICES TO YOUTHS
19 TRANSFERRED TO THE CUSTODY OF THE DIVISION PURSUANT TO THE FAMILY COURT
20 ACT OR THE PENAL LAW SHALL POST, IN AT LEAST ONE PROMINENT PLACE AND
21 READILY ACCESSIBLE TO THE GENERAL PUBLIC, INCLUDING YOUTHS IN THE CARE
22 OR CUSTODY OF THE FACILITY, A LEGIBLE STATEMENT SETTING FORTH THE RIGHTS
23 ENUMERATED IN SUBDIVISION ONE OF THIS SECTION, TOGETHER WITH A STATEMENT
24 DESCRIBING THE PROCESS FOR FILING COMPLAINTS WITH THE DIVISION CONCERN-
25 ING ANY VIOLATION OF SUCH RIGHTS. SUCH POSTED STATEMENT SHALL BE WRITTEN
26 IN BOTH ENGLISH AND SPANISH, SHALL BE TITLED, IN LETTERING NO SMALLER
27 THAN TWO INCHES IN HEIGHT AND TWO INCHES IN WIDTH, WITH THE PHRASE
28 "PROCESS FOR REGISTERING COMPLAINTS" AND SHALL CONTAIN THE NAME AND
29 TELEPHONE NUMBER OF THE OFFICE WITH WHICH TO REGISTER COMPLAINTS,
30 TOGETHER WITH SUCH OTHER INFORMATION AS THE DIVISION DEEMS TO BE NECES-
31 SARY.

32 4. COMPLAINTS REGARDING VIOLATIONS OF THE RIGHTS ENUMERATED IN SUBDI-
33 VISION ONE OF THIS SECTION MAY BE MADE DIRECTLY TO THE DIVISION OR TO
34 THE DIVISION FACILITY WHERE THE VIOLATION OCCURRED. ALL COMPLAINTS MADE
35 TO THE DIVISION FACILITY SHALL BE RECORDED BY THE FACILITY ADMINIS-
36 TRATION, AND SHALL IMMEDIATELY BE REFERRED TO THE DIVISION FOR INVESTI-
37 GATION. THE DIRECTOR SHALL PROMULGATE RULES AND REGULATIONS AS HE OR SHE
38 DEEMS NECESSARY TO GIVE EFFECT TO THE PROVISIONS OF THIS SECTION.

39 5. (A) THE RIGHT TO REHABILITATION SHALL INCLUDE THE RIGHT TO A
40 COMPREHENSIVE ASSESSMENT OF THE YOUTH'S MEDICAL AND PSYCHOLOGICAL
41 HEALTH, AND EDUCATIONAL, FAMILY AND SUBSTANCE ABUSE ISSUES PRIOR TO THE
42 TIME THE YOUTH ENTERS INTO THE CUSTODY OR CARE OF THE JUVENILE JUSTICE
43 SYSTEM. YOUTHS SHALL BE PLACED IN A DIVISION FACILITY ONLY AFTER ASSESS-
44 MENT AND A DETERMINATION THAT THE PLACEMENT IS THE LEAST RESTRICTIVE AND
45 MOST APPROPRIATE FACILITY AVAILABLE. IN CASES INVOLVING THE TRANSFER OF
46 A YOUTH WITH SUBSTANCE ABUSE PROBLEMS TO THE CUSTODY OF THE DIVISION
47 PURSUANT TO THE PENAL LAW, PRIORITY SHALL BE GIVEN TO TREATING SUBSTANCE
48 ABUSE ISSUES.

49 (B) THE RIGHT TO TREATMENT SHALL INCLUDE THE RIGHT TO BE ASSIGNED TO
50 AND HAVE ACCESS TO APPROPRIATE COUNSELORS AND TREATMENT PROGRAMS. ANY
51 YOUTH WHO WAS FOUND TO HAVE SUBSTANCE ABUSE ISSUES SHALL UNDERGO TREAT-
52 MENT PROGRAMS WHILE IN THE JUVENILE JUSTICE SYSTEM.

53 (C) THE RIGHT TO EDUCATION SHALL INCLUDE THE RIGHT TO BE TAUGHT BY
54 LICENSED, GRADE APPROPRIATE TEACHERS IN ACCORDANCE WITH THE YOUTH'S
55 GRADE LEVEL AND TO EARN TRANSFERABLE SCHOOL CREDIT EQUIVALENT TO THAT
56 WHICH THE YOUTH WOULD HAVE HAD THE OPPORTUNITY TO OBTAIN AT A REGULAR

1 FULL-TIME SCHOOL, AS WELL AS TO RECEIVE CAREER EDUCATION AS PROVIDED BY
2 SECTION FIVE HUNDRED THIRTEEN OF THIS SUBTITLE, WHERE APPROPRIATE.

3 (D) THE RIGHT TO REINTEGRATION SHALL INCLUDE THE RIGHT TO A COMPREHEN-
4 SIVE ASSESSMENT OF THE YOUTH'S MEDICAL AND PSYCHOLOGICAL HEALTH, AND
5 EDUCATIONAL, FAMILY AND SUBSTANCE ABUSE ISSUES IMMEDIATELY PRIOR TO THE
6 TIME THE YOUTH IS RELEASED FROM THE DIVISION FACILITIES, THE RIGHT TO
7 HAVE A COUNSELOR ASSIGNED TO SUPPORT THE YOUTH'S RE-ENTRY INTO THE
8 COMMUNITY AND THE RIGHT TO RECEIVE A MINIMUM OF TWO HOURS OF COUNSELING
9 PER WEEK FOR UP TO A YEAR AFTER THE YOUTH IS DISCHARGED FROM THE FACILI-
10 TY. ANY YOUTH WHO WAS FOUND TO HAVE SUBSTANCE ABUSE ISSUES SHALL UNDERGO
11 TREATMENT PROGRAMS, AS NEEDED, FOR UP TO TWO YEARS AFTER LEAVING THE
12 FACILITY.

13 (E) THE RIGHT TO SAFETY AND SECURITY SHALL INCLUDE: (I) THE RIGHT TO
14 BE HOUSED IN FACILITIES SEPARATE AND APART FROM FACILITIES USED TO HOUSE
15 ADULT INMATES OF THE JUSTICE SYSTEM. NO YOUTH IN THE JUVENILE JUSTICE
16 SYSTEM SHALL HAVE CONTACT WITH ADULT INMATES OF THE JUSTICE SYSTEM OR BE
17 HELD IN ANY PRISON OR OTHER FACILITY DESIGNATED FOR USE BY ADULT INMATES
18 OF THE JUSTICE SYSTEM WHEN THE FACILITY IS UTILIZED BY ADULT INMATES;
19 AND

20 (II) THE RIGHT TO HAVE ACCESS TO A COUNSELOR WHO IS NOT AFFILIATED
21 WITH THE DIVISION FACILITY IN WHICH THE YOUTH RESIDES OR FROM WHICH THE
22 YOUTH RECEIVES TREATMENT, TO HAVE ALLEGATIONS OF MISTREATMENT BY FACILI-
23 TY STAFF PROMPTLY INVESTIGATED AND TO HAVE A COMPLETE RECORD OF THE
24 INVESTIGATION AND THE DISPOSITION OF THE MATTER FILED WITH THE COMMIS-
25 SIONER'S OFFICE. A YOUTH SHALL BE IMMEDIATELY REMOVED FROM A DIVISION
26 FACILITY FOLLOWING A COMPLAINT OF ABUSE OF THE YOUTH BY FACILITY STAFF
27 AND SUCH YOUTH SHALL NOT BE RETURNED TO THE FACILITY WHERE THE ABUSE WAS
28 ALLEGED TO HAVE OCCURRED UNLESS AND UNTIL THE COMPLAINT IS INVESTIGATED
29 AND THE CASE IS CLOSED WITH A FINDING THAT THE ALLEGATIONS OF ABUSE WERE
30 FALSE. IF ABUSE WAS FOUND TO HAVE OCCURRED, THE YOUTH SHALL BE PLACED
31 AT A DIFFERENT DIVISION FACILITY FOR THE DURATION OF HIS OR HER TIME IN
32 THE JUVENILE JUSTICE SYSTEM.

33 S 4. This act shall take effect immediately.