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

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:

Section 1. The legislature finds and declares that research based on national data from 2000 has shown that up to eighty percent of juveniles in juvenile justice systems have a nexus to substance abuse: 18.2 percent are under the influence of alcohol or drugs while committing their offenses, 53.9 percent test positive for drugs at the time of arrest, 12.1 percent are arrested for committing an alcohol or drug offense, 62.5 percent report having substance abuse problems, and many exhibit some combination of these characteristics; while forty-four percent of arrested juveniles meet clinical criteria for substance use disorder requiring medical treatment, only 3.6 percent of arrested juvenile offenders with substance abuse and addiction problems receive any form of substance abuse treatment according to the National Center on Addiction and Substance Abuse (CASA); while up to seventy-five percent of all incarcerated juveniles have some diagnosable mental health disorder, mental health services remain scarce; that incarcerated juveniles have an increased need for basic and special education, but they are progressively left behind in systems that use uncredentialed teachers, crowded and inadequate facilities and which fail to create an educational environment conducive to learning and development; that juveniles who drink and use drugs are more likely to be arrested multiple times, with each conviction raising the likelihood of the juvenile being processed through adult court and subject to an eventual adult felony conviction, and such juveniles recidivate faster with more serious 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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percentage of adults in prison for felony crimes were incarcerated as juveniles.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(J) RIGHT TO PROTECTION FROM SELF-INCRIMINATION: ALL YOUTHS IN THE SYSTEM HAVE THE RIGHT TO APPROPRIATE SAFEGUARDS AGAINST SELF-INCRIMINATION, INCLUDING THE VESTING IN THE YOUTH OF A PRIVILEGE FOR ANY STATEMENT BY THE YOUTH GIVEN IN FURTHERANCE OF TREATMENT OR ASSESSMENT FOR TREATMENT;

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

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

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

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

4. COMPLAINTS REGARDING VIOLATIONS OF THE RIGHTS ENUMERATED IN SUBDIVISION ONE OF THIS SECTION MAY BE MADE DIRECTLY TO THE DIVISION OR TO THE DIVISION FACILITY WHERE THE VIOLATION OCCURRED. ALL COMPLAINTS MADE TO THE DIVISION FACILITY SHALL BE RECORDED BY THE FACILITY ADMINISTRATION, AND SHALL IMMEDIATELY BE REFERRED TO THE DIVISION FOR INVESTIGATION. THE DIRECTOR SHALL PROMULGATE RULES AND REGULATIONS AS HE OR SHE DEEMS NECESSARY TO GIVE EFFECT TO THE PROVISIONS OF THIS SECTION.

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

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

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

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

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

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

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

S 4. This act shall take effect immediately.