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

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2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. MORAHAN -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities

AN ACT to amend the mental hygiene law, the social services law and the education law, in relation to establishing a bill of rights for children in residential care

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

Section 1. The mental hygiene law is amended by adding a new section 33.19 to read as follows:

S 33.19 RIGHTS OF CHILDREN IN RESIDENTIAL CARE.

(A) IN ORDER TO ENSURE THAT CHILDREN PLACED IN RESIDENTIAL PROGRAMS OPERATED OR LICENSED BY THE OFFICE OF MENTAL HEALTH OR OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES ARE ASSURED APPROPRIATE CARE, THE COMMISSIONER OF THE OFFICE OF MENTAL HEALTH AND THE COMMISSIONER OF THE OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES SHALL PROMULGATE REGULATIONS REGARDING RIGHTS OF SUCH CHILDREN IN RESIDENTIAL CARE. SUCH REGULATIONS SHALL INCLUDE, BUT NOT BE LIMITED TO:

1. THE RIGHT TO A SAFE, NURTURING ENVIRONMENT FREE FROM ABUSE AND MISTREATMENT BY EMPLOYEES AND OTHER RESIDENTS OF THE FACILITY;

2. THE RIGHT TO AN INDIVIDUALIZED PLAN OF TREATMENT SERVICES DESIGNED WITH THE ACTIVE PARTICIPATION OF THE CHILD, TO THE EXTENT POSSIBLE AND CLINICALLY APPROPRIATE, AND THE PARENT OR GUARDIAN;

3. THE RIGHT TO BE FREE FROM PHYSICAL RESTRAINT AND SECLUSION, EXCEPT AS OTHERWISE AUTHORIZED BY LAW OR REGULATION, PROVIDED, HOWEVER, NO MECHANICAL RESTRAINT OR SECLUSION MAY BE USED IF THE CHILD IS UNDER TWELVE YEARS OF AGE;

4. THE RIGHT TO SAFE MEDICATION PRESCRIBING PRACTICES, INCLUDING THE PROVISION OF INFORMATION ABOUT MEDICATIONS AND, SUBJECT TO THE PROVISIONS OF SUBDIVISION (E) OF SECTION 33.21 OF THIS ARTICLE, CONSENT FOR PSYCHOTROPIC MEDICATIONS FROM THE PARENT OR GUARDIAN;

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

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5. THE RIGHT TO COMMUNICATE THROUGH LETTERS, PHONE CALLS AND VISITS WITH PARENT OR PARENTS, OTHER FAMILY MEMBERS, GUARDIANS OR OTHER SIGNIFICANT INDIVIDUALS, ABSENT LEGAL OR CLINICAL IMPEDIMENTS WHICH MUST BE DOCUMENTED IN THE CASE RECORD OF SUCH CHILD;

6. THE RIGHT TO ACCESS MEANINGFUL RECREATIONAL ACTIVITIES AND COMMUNITY PROGRAMS INCLUDING DAILY OUTDOOR OR EXERCISE ACTIVITIES UNLESS THERE ARE LEGAL OR CLINICAL IMPEDIMENTS WHICH SHALL BE DOCUMENTED IN THE CASE RECORD OF THE CHILD;

7. THE RIGHT TO EXPRESS GRIEVANCES, CONCERNS AND SUGGESTIONS AND TO COMMUNICATE WITH THE MENTAL HYGIENE LEGAL SERVICE, COMMISSION ON QUALITY OF CARE FOR THE MENTALLY DISABLED, AND THE PROTECTION AND ADVOCACY PROGRAMS ADMINISTERED BY SUCH COMMISSION WITHOUT FEAR OF RETRIBUTION;

8. THE RIGHT TO PARTICIPATE IN RELIGIOUS ACTIVITIES; AND

9. THE RIGHT TO RECEIVE AN APPROPRIATE EDUCATION IN THE LEAST RESTRICTIVE ENVIRONMENT.

(B) THE FOREGOING RIGHTS MAY NOT BE LIMITED AS A PUNISHMENT, FOR THE CONVENIENCE OF STAFF, OR MADE CONTINGENT AS PART OF A TREATMENT PLAN. THE COMMISSIONERS AND FACILITY DIRECTOR OR CHIEF ADMINISTRATIVE OFFICER OF ANY SUCH RESIDENTIAL PROGRAM SHALL ENSURE THAT CHILDREN AND THEIR PARENTS OR GUARDIANS ARE INFORMED OF SUCH RIGHTS.

S 2. The social services law is amended by adding a new section 462-c to read as follows:

S 462-C. RIGHTS OF CHILDREN IN RESIDENTIAL CARE. 1. IN ORDER TO ENSURE THAT CHILDREN PLACED IN RESIDENTIAL PROGRAMS OPERATED, LICENSED OR CERTIFIED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES ARE ASSURED APPROPRIATE CARE, THE COMMISSIONER OF SUCH OFFICE SHALL PROMULGATE RULES AND REGULATIONS REGARDING THE RIGHTS OF SUCH CHILDREN IN RESIDENTIAL CARE. SUCH REGULATIONS SHALL INCLUDE, BUT NOT BE LIMITED TO:

(A) THE RIGHT TO A SAFE, NURTURING ENVIRONMENT FREE FROM ABUSE AND MISTREATMENT BY EMPLOYEES AND OTHER RESIDENTS OF THE FACILITY;

(B) THE RIGHT TO AN INDIVIDUALIZED PLAN OF TREATMENT SERVICES DESIGNED WITH THE ACTIVE PARTICIPATION OF THE CHILD, TO THE EXTENT POSSIBLE AND CLINICALLY APPROPRIATE, AND THE PARENT OR GUARDIAN;

(C) THE RIGHT TO BE FREE FROM PHYSICAL RESTRAINT AND SECLUSION, EXCEPT AS OTHERWISE AUTHORIZED BY LAW OR REGULATION, PROVIDED, HOWEVER, NO MECHANICAL RESTRAINT OR SECLUSION MAY BE USED IF THE CHILD IS UNDER TWELVE YEARS OF AGE;

(D) THE RIGHT TO SAFE MEDICATION PRESCRIBING PRACTICES, INCLUDING THE PROVISION OF INFORMATION ABOUT MEDICATIONS AND, SUBJECT TO THE PROVISIONS OF SUBDIVISION (E) OF SECTION 33.21 OF THE MENTAL HYGIENE LAW, CONSENT FOR PSYCHOTROPIC MEDICATIONS FROM THE PARENT OR GUARDIAN;

(E) THE RIGHT TO COMMUNICATE THROUGH LETTERS, PHONE CALLS AND VISITS WITH PARENT OR PARENTS, OTHER FAMILY MEMBERS, GUARDIANS OR OTHER SIGNIFICANT INDIVIDUALS, ABSENT LEGAL OR CLINICAL IMPEDIMENTS WHICH MUST BE DOCUMENTED IN THE CASE RECORD OF SUCH CHILD;

(F) THE RIGHT TO ACCESS MEANINGFUL RECREATIONAL ACTIVITIES AND COMMUNITY PROGRAMS INCLUDING DAILY OUTDOOR OR EXERCISE ACTIVITIES UNLESS THERE ARE LEGAL OR CLINICAL IMPEDIMENTS WHICH SHALL BE DOCUMENTED IN THE CASE RECORD OF THE CHILD;

(G) THE RIGHT TO EXPRESS GRIEVANCES, CONCERNS AND SUGGESTIONS WITHOUT FEAR OF RETRIBUTION;

(H) THE RIGHT TO PARTICIPATE IN RELIGIOUS ACTIVITIES; AND

(I) THE RIGHT TO RECEIVE AN APPROPRIATE EDUCATION IN THE LEAST RESTRICTIVE ENVIRONMENT.

2. THE FOREGOING RIGHTS MAY NOT BE LIMITED AS A PUNISHMENT, FOR THE CONVENIENCE OF STAFF, OR MADE CONTINGENT AS PART OF A TREATMENT PLAN.

THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES AND CHIEF ADMINISTRATIVE OFFICER OF ANY SUCH RESIDENTIAL PROGRAM SHALL ENSURE THAT CHILDREN AND THEIR PARENTS OR GUARDIANS ARE INFORMED OF SUCH RIGHTS.

S 3. The education law is amended by adding a new section 4411 to read as follows:

S 4411. RIGHTS OF CHILDREN IN RESIDENTIAL CARE. 1. IN ORDER TO ENSURE THAT CHILDREN PLACED IN RESIDENTIAL PROGRAMS OPERATED OR APPROVED BY THE DEPARTMENT ARE ASSURED APPROPRIATE CARE, THE COMMISSIONER SHALL PROMULGATE RULES AND REGULATIONS REGARDING THE RIGHTS OF SUCH CHILDREN IN RESIDENTIAL CARE. SUCH REGULATIONS SHALL INCLUDE, BUT NOT BE LIMITED TO:

A. THE RIGHT TO A SAFE, NURTURING ENVIRONMENT FREE FROM ABUSE AND MISTREATMENT BY EMPLOYEES AND OTHER RESIDENTS OF THE FACILITY;

B. THE RIGHT TO AN INDIVIDUALIZED EDUCATION PROGRAM DESIGNED WITH THE ACTIVE PARTICIPATION OF THE CHILD, TO THE EXTENT POSSIBLE AND CLINICALLY APPROPRIATE, AND THE PARENT OR GUARDIAN;

C. THE RIGHT TO BE FREE FROM PHYSICAL RESTRAINT AND SECLUSION, EXCEPT AS OTHERWISE AUTHORIZED BY LAW OR REGULATION, PROVIDED, HOWEVER, NO MECHANICAL RESTRAINT OR SECLUSION MAY BE USED IF THE CHILD IS UNDER TWELVE YEARS OF AGE;

D. THE RIGHT TO SAFE MEDICATION PRESCRIBING PRACTICES, INCLUDING THE PROVISION OF INFORMATION ABOUT MEDICATIONS AND, SUBJECT TO THE PROVISIONS OF SUBDIVISION (E) OF SECTION 33.21 OF THE MENTAL HYGIENE LAW, CONSENT FOR PSYCHOTROPIC MEDICATIONS FROM THE PARENT OR GUARDIAN;

E. THE RIGHT TO COMMUNICATE THROUGH LETTERS, PHONE CALLS AND VISITS WITH PARENT OR PARENTS, OTHER FAMILY MEMBERS, GUARDIANS OR OTHER SIGNIFICANT INDIVIDUALS, ABSENT LEGAL OR CLINICAL IMPEDIMENTS WHICH MUST BE DOCUMENTED IN THE CASE RECORD OF SUCH CHILD;

F. THE RIGHT TO ACCESS MEANINGFUL RECREATIONAL ACTIVITIES AND COMMUNITY PROGRAMS INCLUDING DAILY OUTDOOR OR EXERCISE ACTIVITIES UNLESS THERE ARE LEGAL OR CLINICAL IMPEDIMENTS WHICH SHALL BE DOCUMENTED IN THE CASE RECORD OF THE CHILD;

G. THE RIGHT TO EXPRESS GRIEVANCES, CONCERNS AND SUGGESTIONS WITHOUT FEAR OF RETRIBUTION;

H. THE RIGHT TO PARTICIPATE IN RELIGIOUS ACTIVITIES; AND

I. THE RIGHT TO RECEIVE AN APPROPRIATE EDUCATION IN THE LEAST RESTRICTIVE ENVIRONMENT.

2. THE FOREGOING RIGHTS MAY NOT BE LIMITED AS A PUNISHMENT, FOR THE CONVENIENCE OF STAFF, OR MADE CONTINGENT AS PART OF AN INDIVIDUALIZED EDUCATION PROGRAM. THE COMMISSIONER AND DIRECTOR OR CHIEF ADMINISTRATIVE OFFICER OF ANY SUCH RESIDENTIAL PROGRAM SHALL ENSURE THAT CHILDREN AND THEIR PARENTS OR GUARDIANS ARE INFORMED OF SUCH RIGHTS.

S 4. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.