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

4426

2011-2012 Regular Sessions

I N A S S E M B L Y

February 3, 2011

Introduced by M. of A. SCARBOROUGH, ROBINSON, O'DONNELL, JAFFEE, BARRON -- Multi-Sponsored by -- M. of A. CLARK, GLICK, KELLNER, MILLMAN, PHEFFER -- read once and referred to the Committee on Children and Families

AN ACT to amend the executive law, in relation to enacting the "SAFETY act"

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

Section 1. Short title. This act shall be known and may be cited as the "SAFETY act".

S 2. Article 19-G of the executive law is amended by adding a new title 5 to read as follows:

TITLE 5

SAFE AND FAIR EQUAL TREATMENT FOR YOUTH (SAFETY) ACT

SECTION 531-A. LEGISLATIVE INTENT.
531-B. DEFINITIONS.
531-C. DISCRIMINATION AND HARASSMENT PROHIBITED.
531-D. POLICIES AND GUIDELINES.
531-E. COMMISSIONER'S RESPONSIBILITIES.
531-F. REPORTING BY COMMISSIONER.
531-G. PROTECTION OF PEOPLE WHO REPORT DISCRIMINATION OR HARASSMENT.
531-H. APPLICATION.
531-I. SEVERABILITY AND CONSTRUCTION.

S 531-A. LEGISLATIVE INTENT. THE LEGISLATURE FINDS THAT YOUTH ARE PLACED WITH THE OFFICE OF CHILDREN AND FAMILY SERVICES IN ORDER TO PROVIDE THOSE YOUTH THE OPPORTUNITY FOR REHABILITATION. SUCH AN OPPORTUNITY INCLUDES THE PROVISION OF EDUCATIONAL, THERAPEUTIC, AND OTHER NECESSARY SERVICES TO ENSURE THAT THESE YOUTH CAN BECOME SUCCESSFUL AND PRODUCTIVE MEMBERS OF THEIR COMMUNITIES. THE LEGISLATURE FINDS THAT A YOUTH'S OPPORTUNITY FOR REHABILITATION AND ABILITY TO LEARN AND MEET

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

LBD03580-01-1

HIGH STANDARDS OF BEHAVIOR AND ACADEMIC ACHIEVEMENT ARE COMPROMISED BY INCIDENTS OF DISCRIMINATION AND HARASSMENT. IT IS HEREBY DECLARED TO BE THE POLICY OF THE STATE TO AFFORD ALL YOUTH IN FACILITIES OPERATED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES AN ENVIRONMENT FREE OF DISCRIMINATION AND HARASSMENT BASED ON ACTUAL OR PERCEIVED RACE, COLOR, NATIONAL ORIGIN, ETHNIC GROUP, RELIGION, RELIGIOUS PRACTICE, DISABILITY, SEXUAL ORIENTATION, GENDER, OR SEX. THE PURPOSE OF THIS TITLE IS TO FOSTER CIVILITY IN FACILITIES OPERATED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES AND TO PREVENT AND PROHIBIT CONDUCT WHICH PLACES ANY YOUTH'S OPPORTUNITY FOR REHABILITATION IN JEOPARDY.

S 531-B. DEFINITIONS. FOR THE PURPOSES OF THIS TITLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "DISABILITY" SHALL MEAN DISABILITY AS DEFINED IN SUBDIVISION TWENTY-ONE OF SECTION TWO HUNDRED NINETY-TWO OF THIS CHAPTER.

2. "EMPLOYEE" SHALL MEAN EMPLOYEE OF THE OFFICE OF CHILDREN AND FAMILY SERVICES.

3. "FACILITY" SHALL MEAN A RESIDENTIAL FACILITY OPERATED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES.

4. "GENDER" SHALL MEAN ACTUAL OR PERCEIVED SEX AND SHALL INCLUDE A PERSON'S GENDER IDENTITY OR EXPRESSION.

5. "HARASSMENT" SHALL MEAN THE CREATION OF A HOSTILE ENVIRONMENT BY CONDUCT OR BY VERBAL THREATS, INTIMIDATION OR ABUSE, INCLUDING CONDUCT, VERBAL THREATS, INTIMIDATION OR ABUSE BASED ON A PERSON'S ACTUAL OR PERCEIVED RACE, COLOR, NATIONAL ORIGIN, ETHNIC GROUP, RELIGION, RELIGIOUS PRACTICE, DISABILITY, SEXUAL ORIENTATION, GENDER OR SEX, THAT HAS OR WOULD HAVE THE EFFECT OF UNREASONABLY AND SUBSTANTIALLY INTERFERING WITH A YOUTH'S OPPORTUNITY FOR REHABILITATION, EDUCATIONAL PERFORMANCE, OPPORTUNITIES OR BENEFITS, OR MENTAL, EMOTIONAL OR PHYSICAL WELL-BEING; OR CONDUCT, VERBAL THREATS, INTIMIDATION OR ABUSE THAT REASONABLY CAUSES OR WOULD REASONABLY BE EXPECTED TO CAUSE A YOUTH TO FEAR FOR HIS OR HER PHYSICAL SAFETY.

6. "PROGRAM" SHALL MEAN ANY PROGRAM OPERATED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES AS A REHABILITATIVE SERVICE FOR YOUTH WHO HAVE BEEN ADJUDICATED DELINQUENT PURSUANT TO ARTICLE THREE OF THE FAMILY COURT ACT OR A PERSON IN NEED OF SUPERVISION PURSUANT TO ARTICLE SEVEN OF THE FAMILY COURT ACT.

S 531-C. DISCRIMINATION AND HARASSMENT PROHIBITED. 1. NO YOUTH SHALL BE SUBJECTED TO HARASSMENT BY EMPLOYEES OF FACILITIES OR PROGRAMS; NOR SHALL ANY YOUTH BE SUBJECTED TO DISCRIMINATION BASED ON THAT YOUTH'S ACTUAL OR PERCEIVED RACE, COLOR, NATIONAL ORIGIN, ETHNIC GROUP, RELIGION, RELIGIOUS PRACTICE, DISABILITY, SEXUAL ORIENTATION, GENDER, OR SEX BY FACILITY OR PROGRAM EMPLOYEES OR YOUTH IN A FACILITY OR DURING PARTICIPATION IN A PROGRAM.

2. AN AGE-APPROPRIATE VERSION OF THE POLICY OUTLINED IN SUBDIVISION ONE OF THIS SECTION, WRITTEN IN PLAIN-LANGUAGE, SHALL BE PRESENTED TO EACH YOUTH UPON HIS OR HER ORIENTATION TO ANY FACILITY OR PROGRAM.

S 531-D. POLICIES AND GUIDELINES. THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL CREATE POLICIES AND GUIDELINES THAT SHALL INCLUDE, BUT NOT BE LIMITED TO:

1. POLICIES INTENDED TO CREATE A FACILITY AND PROGRAM ENVIRONMENT THAT IS FREE FROM DISCRIMINATION OR HARASSMENT;

2. GUIDELINES TO BE USED IN FACILITY AND PROGRAM TRAINING CURRICULUMS TO DISCOURAGE THE DEVELOPMENT OF DISCRIMINATION OR HARASSMENT AND THAT ARE DESIGNED:

A. TO RAISE THE AWARENESS AND SENSITIVITY OF FACILITY AND PROGRAM EMPLOYEES TO POTENTIAL DISCRIMINATION OR HARASSMENT, AND

B. TO ENABLE FACILITY AND PROGRAM EMPLOYEES TO PREVENT AND RESPOND APPROPRIATELY TO DISCRIMINATION OR HARASSMENT; AND

3. GUIDELINES RELATING TO THE DEVELOPMENT OF NONDISCRIMINATORY INSTRUCTIONAL AND COUNSELING METHODS, AND REQUIRING THAT AT LEAST ONE STAFF MEMBER AT EVERY FACILITY AND PROGRAM BE THOROUGHLY TRAINED TO HANDLE HUMAN RELATIONS IN THE AREAS OF RACE, COLOR, NATIONAL ORIGIN, ETHNIC GROUP, RELIGION, RELIGIOUS PRACTICE, DISABILITY, SEXUAL ORIENTATION, GENDER, AND SEX.

S 531-E. COMMISSIONER'S RESPONSIBILITIES. THE COMMISSIONER SHALL:

1. DEVELOP MODEL POLICIES AND, TO THE EXTENT POSSIBLE, DIRECT SERVICES, TO FACILITIES AND PROGRAMS RELATED TO PREVENTING DISCRIMINATION AND HARASSMENT AND TO FOSTERING AN ENVIRONMENT IN EVERY FACILITY AND PROGRAM WHERE ALL YOUTH CAN LIVE, LEARN AND REFORM IN A SAFE AND SUPPORTIVE ENVIRONMENT FREE OF MANIFESTATIONS OF BIAS;

2. PROMULGATE REGULATIONS TO ASSIST FACILITIES AND PROGRAMS IN IMPLEMENTING THIS TITLE INCLUDING, BUT NOT LIMITED TO, REGULATIONS TO ASSIST FACILITIES AND PROGRAMS IN DEVELOPING MEASURED, BALANCED, AND AGE-APPROPRIATE RESPONSES TO VIOLATIONS OF THIS POLICY, WITH REMEDIES AND PROCEDURES FOCUSING ON INTERVENTION AND THE CREATION OF A SAFE AND SUPPORTIVE REHABILITATIVE ENVIRONMENT.

S 531-F. REPORTING BY COMMISSIONER. THE COMMISSIONER SHALL CREATE A PROCEDURE UNDER WHICH MATERIAL INCIDENTS OF DISCRIMINATION AND HARASSMENT IN FACILITIES OR PROGRAMS ARE REPORTED TO THE OFFICE OF CHILDREN AND FAMILY SERVICES ON AN ANNUAL BASIS. SUCH PROCEDURE SHALL PROVIDE THAT SUCH REPORTS SHALL, WHEREVER POSSIBLE, ALSO DELINEATE THE SPECIFIC NATURE OF SUCH INCIDENTS OF DISCRIMINATION OR HARASSMENT PROVIDED THAT SUCH DETAILS SHALL INCLUDE ONLY NON-CLIENT IDENTIFYING INFORMATION.

S 531-G. PROTECTION OF PEOPLE WHO REPORT DISCRIMINATION OR HARASSMENT. ANY PERSON HAVING REASONABLE CAUSE TO SUSPECT THAT A YOUTH HAS BEEN SUBJECTED TO DISCRIMINATION OR HARASSMENT IN A FACILITY OR PROGRAM, WHO, ACTING REASONABLY AND IN GOOD FAITH, EITHER REPORTS SUCH INFORMATION TO FACILITY OR PROGRAM OFFICIALS, TO THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES, OR TO LAW ENFORCEMENT AUTHORITIES OR OTHERWISE INITIATES, TESTIFIES, PARTICIPATES OR ASSISTS IN ANY FORMAL OR INFORMAL PROCEEDINGS UNDER THIS TITLE, SHALL HAVE IMMUNITY FROM ANY CIVIL LIABILITY THAT MAY ARISE FROM THE MAKING OF SUCH REPORT OR FROM INITIATING, TESTIFYING, PARTICIPATING OR ASSISTING IN SUCH FORMAL OR INFORMAL PROCEEDINGS, AND NO FACILITY OR PROGRAM EMPLOYEE SHALL TAKE, REQUEST OR CAUSE A RETALIATORY ACTION AGAINST ANY SUCH PERSON WHO, ACTING REASONABLY AND IN GOOD FAITH, EITHER MAKES SUCH A REPORT OR INITIATES, TESTIFIES, PARTICIPATES OR ASSISTS IN SUCH FORMAL OR INFORMAL PROCEEDINGS.

S 531-H. APPLICATION. NOTHING IN THIS TITLE SHALL PRECLUDE OR LIMIT ANY RIGHT OR CAUSE OF ACTION PROVIDED UNDER ANY LOCAL, STATE OR FEDERAL ORDINANCE, LAW OR REGULATION INCLUDING BUT NOT LIMITED TO ANY REMEDIES OR RIGHTS AVAILABLE UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT, TITLE VII OF THE CIVIL RIGHTS LAW OF 1964, SECTION 504 OF THE REHABILITATION ACT OF 1973 OR THE AMERICANS WITH DISABILITIES ACT OF 1990.

S 531-I. SEVERABILITY AND CONSTRUCTION. THE PROVISIONS OF THIS TITLE SHALL BE SEVERABLE, AND IF ANY COURT OF COMPETENT JURISDICTION DECLARES ANY PHRASE, CLAUSE, SENTENCE OR PROVISION OF THIS TITLE TO BE INVALID, OR ITS APPLICABILITY TO ANY GOVERNMENT AGENCY, PERSON OR CIRCUMSTANCE IS DECLARED INVALID, THE REMAINDER OF THIS TITLE AND ITS RELEVANT APPLICABILITY SHALL NOT BE AFFECTED. THE PROVISIONS OF THIS TITLE SHALL BE LIBERALLY CONSTRUED TO GIVE EFFECT TO THE PURPOSES THEREOF.

S 3. This act shall take effect on the one hundred twentieth day after it shall have become a law, except that any rules or regulations necessary for the timely implementation of this act on its effective date shall be promulgated on or before such date.