

4427

2011-2012 Regular Sessions

I N   A S S E M B L Y

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Introduced by M. of A. SCARBOROUGH, COOK, JAFFEE, TITUS, P. RIVERA, MILLMAN, SCHROEDER, WRIGHT, ROBINSON, N. RIVERA -- Multi-Sponsored by -- M. of A. BENEDETTO, BOYLAND, BROOK-KRASNY, GLICK, MAISEL, McENENY, PHEFFER, REILLY, J. RIVERA, SWEENEY, TOWNS, WEISENBERG -- read once and referred to the Committee on Children and Families

AN ACT to amend the social services law and the executive law, in relation to residential programs for children

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

1     Section 1. Section 462-b of the social services law is renumbered  
2     section 462-c and a new section 462-b is added to read as follows:  
3     S 462-B. RIGHTS OF YOUTH IN DETENTION AND RESIDENTIAL CARE. 1. IN  
4     ORDER TO ENSURE THAT RESIDENTS OF FACILITIES OR PROGRAMS FOR YOUTH OPER-  
5     ATED, LICENSED OR CERTIFIED BY THE OFFICE OF CHILDREN AND FAMILY  
6     SERVICES ARE TREATED CONSISTENTLY WITH THE LAWS AND REGULATIONS, AND ARE  
7     ASSURED APPROPRIATE AND QUALITY CARE, THE COMMISSIONER OF THE OFFICE OF  
8     CHILDREN AND FAMILY SERVICES SHALL PROMULGATE REGULATIONS INFORMING  
9     RESIDENTS OF THEIR RIGHTS UNDER LAW. SUCH REGULATIONS SHALL INCLUDE, BUT  
10    NOT BE LIMITED TO, INFORMING RESIDENTS THAT THEY HAVE THE RIGHT TO:  
11    A. A SAFE, SANITARY AND NURTURING ENVIRONMENT FREE FROM ABUSE AND  
12    MISTREATMENT BY EMPLOYEES AND OTHER RESIDENTS OF THE FACILITY OR RESI-  
13    DENCE WHICH MAY CAUSE A CHILD TO BECOME AN ABUSED OR NEGLECTED CHILD AS  
14    DEFINED IN SUBDIVISIONS ONE AND TWO OF SECTION FOUR HUNDRED TWELVE-A OF  
15    THIS CHAPTER AND OTHER RESIDENTS OF THE FACILITY OR RESIDENCE;  
16    B. AN INDIVIDUAL SERVICES OR TREATMENT PLAN, APPROPRIATE FOR THE TYPE  
17    OF FACILITY AND DESIGNED WITH THE ACTIVE PARTICIPATION OF THE YOUTH, AND  
18    THE PARENT OR GUARDIAN, TO THE EXTENT POSSIBLE;  
19    C. THE FOLLOWING SHOULD NOT BE WITHHELD AS A DISCIPLINARY MEASURE:  
20    NUTRITION, HYDRATION, SLEEP, EXERCISE, EDUCATION, BEDDING, A DAILY SHOW-  
21    ER, WATER, A TOILET, MEDICAL SERVICES, READING MATERIAL, AND CONTACT

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

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1 WITH PARENTS, GUARDIANS, OR ATTORNEYS, EXCEPT IN THE EVENT SUCH CONTACT  
2 POSES A SAFETY THREAT TO THE YOUTH OR OTHERS;

3 D. BE FREE FROM PHYSICAL RESTRAINT, SECLUSION, AND EXCLUSION FROM  
4 SOCIAL INTERACTION EXCEPT AS OTHERWISE AUTHORIZED BY LAW AND REGULATION;

5 E. RECEIVE ADEQUATE AND APPROPRIATE MEDICAL, DENTAL, VISION AND MENTAL  
6 HEALTH SERVICES CONSISTENT WITH THE RULES AND REGULATIONS PROMULGATED BY  
7 THE AGENCY OPERATING, CERTIFYING OR SUPERVISING THE FACILITY OR PROGRAM,  
8 PROVIDED THE AGENCY HAS REASONABLE ACCESS TO THE PROVISION OF SUCH  
9 SERVICES AND THAT NECESSARY CONSENTS HAVE BEEN SOUGHT AND OBTAINED FROM  
10 THE APPROPRIATE INDIVIDUALS, AND WHICH SERVICES SHALL INCLUDE A  
11 MEDICALLY APPROPRIATE MEDICATION PRESCRIBING PRACTICE, INCLUDING THE  
12 PROVISION OF INFORMATION ABOUT MEDICATIONS;

13 F. COMMUNICATE THROUGH LETTERS, PHONE CALLS AND VISITS WITH A PARENT  
14 OR PARENTS, OTHER FAMILY MEMBERS, GUARDIANS OR OTHER SIGNIFICANT INDIVIDUALS,  
15 ABSENT LEGAL, CLINICAL OR PROGRAMMATIC IMPEDIMENTS WHICH MUST  
16 BE DOCUMENTED IN THE YOUTH'S CASE RECORD;

17 G. MAKE AND RECEIVE CONFIDENTIAL TELEPHONE CALLS, SEND AND RECEIVE  
18 CONFIDENTIAL MAIL, AND HAVE CONFIDENTIAL VISITS WITH ATTORNEYS,  
19 OMBUDSPERSONS, JUDGES, AND RELIGIOUS AND SPIRITUAL ADVISERS AND THEIR  
20 AUTHORIZED REPRESENTATIVES AS WELL AS LEGAL SERVICE ORGANIZATIONS WHERE  
21 SUCH ORGANIZATIONS HAVE BEEN CONTACTED BY THE YOUTH OR BY SOMEONE ON THE  
22 YOUTH'S BEHALF;

23 H. EXPRESS GRIEVANCES, CONCERNS AND SUGGESTIONS TO STAFF OF THE FACILITY  
24 OR THE OMBUDSPERSON, WHERE AVAILABLE, WITHOUT FEAR OF RETRIBUTION;

25 I. HAVE ACCESS TO RECREATIONAL ACTIVITIES AND COMMUNITY PROGRAMS  
26 INCLUDING DAILY OUTDOOR OR EXERCISE ACTIVITIES BASED UPON THE LEVEL OF  
27 CARE UNLESS THERE ARE LEGAL, CLINICAL, OR PROGRAMMATIC IMPEDIMENTS WHICH  
28 SHALL BE DOCUMENTED IN THE YOUTH'S CASE RECORD BASED UPON LEVEL OF CARE;

29 J. PARTICIPATE IN AVAILABLE RELIGIOUS ACTIVITIES THAT DO NOT CONSTITUTE  
30 A THREAT TO THE SAFETY, SECURITY, OR HEALTH OF OTHER RESIDENTS.  
31 ABSTENTION FROM SUCH ACTIVITIES SHALL NOT RESULT IN FEAR OF RETRIBUTION;

32 K. HAVE AND DISPLAY PHOTOGRAPHS IN THEIR PERSONAL LIVING SPACE ABSENT  
33 LEGAL OR CLINICAL IMPEDIMENTS;

34 L. RECEIVE AN APPROPRIATE EDUCATION IN THE LEAST RESTRICTIVE ENVIRONMENT  
35 AS APPROPRIATE TO THE SPECIFIC RESIDENTIAL SETTING;

36 M. BE FREE OF HARASSMENT FROM EMPLOYEES OR YOUTH IN FACILITIES OR  
37 PROGRAMS;

38 N. BE CALLED BY THE NAME OF THEIR CHOOSING, EXCEPT IN THE EVENT IT  
39 POSES A SAFETY THREAT;

40 O. EXPRESS THEIR GENDER IDENTITY THROUGH APPROPRIATE UNDERGARMENTS AND  
41 HAIR STYLE;

42 P. BE FREE FROM BEING SUBJECTED TO DISCRIMINATION BASED ON THE YOUTH'S  
43 ACTUAL OR PERCEIVED RACE, COLOR, NATIONAL ORIGIN, ETHNIC GROUP, RELIGION,  
44 RELIGIOUS PRACTICE, DISABILITY, SEXUAL ORIENTATION, GENDER, GENDER  
45 IDENTITY OR SEX BY EMPLOYEES OR YOUTH IN FACILITIES OR PROGRAMS AND BE  
46 FREE TO EXPRESS GENDER IDENTITY; AND

47 Q. AN AGE APPROPRIATE VERSION OF THE POLICY OUTLINED IN THIS SECTION,  
48 WRITTEN IN PLAIN LANGUAGE, SHALL BE PRESENTED TO EACH YOUTH UPON HIS OR  
49 HER ORIENTATION TO ANY FACILITY OR PROGRAM.

50 2. NOTHING IN THIS SECTION SHALL CREATE AN INDEPENDENT LEGAL CAUSE OF  
51 ACTION UNLESS OTHERWISE PROVIDED BY LAW.

52 S 2. The executive law is amended by adding a new section 504-c to  
53 read as follows:

54 S 504-C. YOUTH ADVISORY BOARDS WITHIN RESIDENTIAL FACILITIES OPERATED  
55 BY THE OFFICE OF CHILDREN AND FAMILY SERVICES. 1. YOUTH ADVISORY BOARDS  
56 SHALL BE ESTABLISHED WITHIN THE OFFICE OF CHILDREN AND FAMILY SERVICES.

1 THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES, OR HIS  
2 OR HER DESIGNEE, SHALL ESTABLISH YOUTH ADVISORY BOARDS WITHIN ALL RESI-  
3 DENTIAL FACILITIES OPERATED BY THE OFFICE OF CHILDREN AND FAMILY  
4 SERVICES.

5 2. YOUTH ADVISORY BOARDS SHALL ASSIST IN THE DEVELOPMENT OF POLICIES  
6 AFFECTING YOUTH IN CARE, HAVE INPUT ON THE DELIVERY OF SERVICES PROVIDED  
7 AT RESIDENTIAL FACILITIES, AND COMMUNICATE THEIR RECOMMENDATIONS TO THE  
8 COMMISSIONER, OR HIS OR HER DESIGNEE, AND SHALL HAVE ACCESS TO ANY  
9 EXISTING RESOURCES NECESSARY TO COMMUNICATE SUCH RECOMMENDATIONS. YOUTH  
10 ADVISORY BOARDS SHALL MEET WITH THE OMBUDSMAN ON A PERIODIC BASIS OR AT  
11 THE SPECIFIC REQUEST OF SUCH BOARDS. THE OMBUDSMAN SHALL ACCOMMODATE  
12 SPECIFIC MEETING REQUESTS AS SOON AS PRACTICABLE AFTER RECEIVING SUCH  
13 REQUEST OR REQUESTS.

14 S 3. Subdivision 1 of section 462-c of the social services law, as  
15 amended by chapter 465 of the laws of 1992, such section as renumbered  
16 by section one of this act, is amended to read as follows:

17 1. The [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES  
18 shall exercise the enforcement powers enumerated in section four hundred  
19 sixty-d of this article which may apply to secure and non-secure  
20 detention facilities and to those [division for youth] OFFICE OF CHIL-  
21 DREN AND FAMILY SERVICES residential facilities authorized by article  
22 nineteen-G of the executive law and those residential facilities oper-  
23 ated as approved runaway programs or transitional independent living  
24 support programs pursuant to article nineteen-H of the executive law.

25 S 4. This act shall take effect on the ninetieth day after it shall  
26 have become a law. Effective immediately the office of children and  
27 family services is authorized to promulgate on an emergency basis any  
28 and all rules and regulations necessary to implement this act on its  
29 effective date.