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

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2011-2012 Regular Sessions

I N S E N A T E

February 3, 2011

Introduced by Sen. DUANE -- read twice and ordered printed, and when printed to be committed 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:

Section 1. Section 462-b of the social services law is renumbered section 462-c and a new section 462-b is added to read as follows:

S 462-B. RIGHTS OF YOUTH IN DETENTION AND RESIDENTIAL CARE. 1. IN ORDER TO ENSURE THAT RESIDENTS OF FACILITIES OR PROGRAMS FOR YOUTH OPERATED, LICENSED OR CERTIFIED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES ARE TREATED CONSISTENTLY WITH THE LAWS AND REGULATIONS, AND ARE ASSURED APPROPRIATE AND QUALITY CARE, THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL PROMULGATE REGULATIONS INFORMING RESIDENTS OF THEIR RIGHTS UNDER LAW. SUCH REGULATIONS SHALL INCLUDE, BUT NOT BE LIMITED TO, INFORMING RESIDENTS THAT THEY HAVE THE RIGHT TO:

A. A SAFE, SANITARY AND NURTURING ENVIRONMENT FREE FROM ABUSE AND MISTREATMENT BY EMPLOYEES AND OTHER RESIDENTS OF THE FACILITY OR RESIDENCE WHICH MAY CAUSE A CHILD TO BECOME AN ABUSED OR NEGLECTED CHILD AS DEFINED IN SUBDIVISIONS ONE AND TWO OF SECTION FOUR HUNDRED TWELVE-A OF THIS CHAPTER AND OTHER RESIDENTS OF THE FACILITY OR RESIDENCE;

B. AN INDIVIDUAL SERVICES OR TREATMENT PLAN, APPROPRIATE FOR THE TYPE OF FACILITY AND DESIGNED WITH THE ACTIVE PARTICIPATION OF THE YOUTH, AND THE PARENT OR GUARDIAN, TO THE EXTENT POSSIBLE;

C. THE FOLLOWING SHOULD NOT BE WITHHELD AS A DISCIPLINARY MEASURE: NUTRITION, HYDRATION, SLEEP, EXERCISE, EDUCATION, BEDDING, A DAILY SHOWER, WATER, A TOILET, MEDICAL SERVICES, READING MATERIAL, AND CONTACT WITH PARENTS, GUARDIANS, OR ATTORNEYS, EXCEPT IN THE EVENT SUCH CONTACT POSES A SAFETY THREAT TO THE YOUTH OR OTHERS;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

S 504-C. YOUTH ADVISORY BOARDS WITHIN RESIDENTIAL FACILITIES OPERATED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES. 1. YOUTH ADVISORY BOARDS SHALL BE ESTABLISHED WITHIN THE OFFICE OF CHILDREN AND FAMILY SERVICES. THE COMMISSIONER OF THE OFFICE OF CHILDREN AND FAMILY SERVICES, OR HIS OR HER DESIGNEE, SHALL ESTABLISH YOUTH ADVISORY BOARDS WITHIN ALL RESIDENTIAL FACILITIES OPERATED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES.

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

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

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

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