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

5008--B

2013-2014 Regular Sessions

I N A S S E M B L Y

February 14, 2013

Introduced by M. of A. RYAN -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reference changed to the Committee on Correction -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law and the correction law, in relation to authorizing local correctional facilities to provide medical services to minor inmates in the absence of the consent of a parent or guardian when a definite sentence of imprisonment has been imposed

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

Section 1. Subdivision 2 of section 70.20 of the penal law, as amended by section 124 of subpart B of part C of chapter 62 of the laws of 2011, is amended to read as follows:

2. (A) Definite sentence. Except as provided in subdivision four of this section, when a definite sentence of imprisonment is imposed, the court shall commit the defendant to the county or regional correctional institution for the term of his sentence and until released in accordance with the law.

(B) THE COURT IN COMMITTING A DEFENDANT WHO IS NOT YET EIGHTEEN YEARS OF AGE TO THE LOCAL CORRECTIONAL FACILITY SHALL INQUIRE AS TO WHETHER THE PARENTS OR LEGAL GUARDIAN OF THE DEFENDANT, IF PRESENT, WILL GRANT TO THE MINOR THE CAPACITY TO CONSENT TO ROUTINE MEDICAL, DENTAL AND MENTAL HEALTH SERVICES AND TREATMENT.

(C) NOTHING IN THIS SUBDIVISION SHALL PRECLUDE A PARENT OR LEGAL GUARDIAN OF AN INMATE WHO IS NOT YET EIGHTEEN YEARS OF AGE FROM MAKING A MOTION ON NOTICE TO THE LOCAL CORRECTION FACILITY PURSUANT TO ARTICLE TWENTY-TWO OF THE CIVIL PRACTICE LAW AND RULES AND SECTION ONE HUNDRED FORTY OF THE CORRECTION LAW, OBJECTING TO ROUTINE MEDICAL, DENTAL OR MENTAL HEALTH SERVICES AND TREATMENT BEING PROVIDED TO SUCH INMATE UNDER THE PROVISIONS OF PARAGRAPH (B) OF THIS SUBDIVISION.

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

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S 2. The correction law is amended by adding a new section 505 to read as follows:

S 505. PROVISION OF ROUTINE MEDICAL, DENTAL AND MENTAL HEALTH SERVICES AND TREATMENT. 1. WHERE AN INMATE WHO IS NOT YET EIGHTEEN YEARS OF AGE HAS BEEN COMMITTED TO THE CUSTODY OF THE SHERIFF OR OTHER PERSON IN CHARGE OF A LOCAL CORRECTIONAL FACILITY AND NO MEDICAL CONSENT HAS BEEN OBTAINED PRIOR TO COMMITMENT, THE COMMITMENT ORDER SHALL BE DEEMED TO GRANT TO THE MINOR THE CAPACITY TO CONSENT TO ROUTINE MEDICAL, DENTAL AND MENTAL HEALTH SERVICES AND TREATMENT TO HIMSELF OR HERSELF.

2. SUBJECT TO THE REGULATIONS OF THE DEPARTMENT OF HEALTH, ROUTINE MEDICAL, DENTAL AND MENTAL HEALTH SERVICES AND TREATMENT IS DEFINED FOR THE PURPOSES OF THIS SECTION TO MEAN ANY ROUTINE DIAGNOSIS OR TREATMENT, INCLUDING WITHOUT LIMITATION THE ADMINISTRATION OF MEDICATIONS OR NUTRITION, THE EXTRACTION OF BODILY FLUIDS FOR ANALYSIS, AND DENTAL CARE PERFORMED WITH A LOCAL ANESTHETIC. ROUTINE MENTAL HEALTH TREATMENT SHALL NOT INCLUDE PSYCHIATRIC ADMINISTRATION OF MEDICATION UNLESS IT IS PART OF AN ONGOING MENTAL HEALTH PLAN OR UNLESS IT IS OTHERWISE AUTHORIZED BY LAW.

3. (A) AT ANY TIME PRIOR TO THE DATE THE INMATE BECOMES EIGHTEEN YEARS OF AGE, THE INMATE'S PARENT OR LEGAL GUARDIAN MAY INSTITUTE LEGAL PROCEEDINGS PURSUANT TO SECTION 70.20 OF THE PENAL LAW OBJECTING TO THE PROVISION OF ROUTINE MEDICAL, DENTAL OR MENTAL HEALTH SERVICES AND TREATMENT BEING PROVIDED TO THE INMATE.

(B) A NOTICE OF MOTION SHALL BE SERVED ON THE INMATE AND THE SHERIFF OR OTHER PERSON IN CHARGE OF THE LOCAL CORRECTIONAL FACILITY NOT LESS THAN SEVEN DAYS PRIOR TO THE RETURN DATE OF THE MOTION. THE PERSON ON WHOM THE NOTICE OF MOTION IS SERVED SHALL ANSWER THE MOTION NOT LESS THAN TWO DAYS BEFORE THE RETURN DATE. ON EXAMINING THE MOTION AND ANSWER AND, IN ITS DISCRETION, AFTER HEARING ARGUMENT, THE COURT SHALL ENTER AN ORDER, GRANTING OR DENYING THE MOTION.

4. NOTHING IN THIS SECTION SHALL PRECLUDE AN INMATE FROM CONSENTING ON HIS OR HER OWN BEHALF TO ANY MEDICAL, DENTAL OR MENTAL HEALTH SERVICES AND TREATMENT WHERE OTHERWISE AUTHORIZED BY LAW TO DO SO.

S 3. This act shall take effect immediately.