

2625--A

2013-2014 Regular Sessions

I N   S E N A T E

January 23, 2013

---

Introduced by Sens. YOUNG, DeFRANCISCO, FARLEY, GALLIVAN, GOLDEN, LARKIN, LIBOUS, MARCHIONE, MAZIARZ, NOZZOLIO, RANZENHOFER, SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- recommitted to the Committee on Children and Families in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, the family court act, the criminal procedure law and the judiciary law, in relation to enacting "Renee's law"

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

1     Section 1. Short title. This act shall be known and may be cited as  
2     "Renee's law".  
3     S 2. Legislative findings and declaration. The legislature hereby  
4     finds and declares that it is a fundamental purpose of this state's  
5     juvenile justice system to provide a safe environment for both the resi-  
6     dents and the staff of programs licensed, certified and registered by  
7     the office of children and family services. The legislature further  
8     finds that a safe environment is ensured by providing staff of programs  
9     licensed, certified and registered by such office with adequate training  
10    and that this function is a primary responsibility of the commissioner  
11    of children and family services to ensure. Ensuring the safety of the  
12    communities into which the youth are placed is paramount, requiring that  
13    a youth be placed in appropriate locations to avoid preventable tragedy.  
14    The legislature finds that residents of programs and agencies licensed,  
15    certified and registered by the office of children and family services  
16    are committing serious crimes within such programs, and that these  
17    crimes are not being reported to the proper authorities. The provisions  
18    of this act provide a critical framework to improve and maintain safety  
19    within such licensed, certified and registered programs, non-profit

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

LBD07087-03-4

1 community based programs and communities throughout the state allowing  
2 youths under the office of children and family services' jurisdiction  
3 the ability to be rehabilitated and receive skills necessary to inhibit  
4 recidivism.

5 S 3. Section 501 of the executive law is amended by adding two new  
6 subdivisions 7-a and 12-a to read as follows:

7 7-A. TO PROVIDE FOR THE DISSEMINATION OF RECORDS, FILES AND PAPERS  
8 PURSUANT TO SUBDIVISION THREE OF SECTION FIVE HUNDRED ONE-C OF THIS  
9 TITLE, PARAGRAPH ONE OF SUBDIVISION (B) OF SECTION ONE HUNDRED SIXTY-SIX  
10 OF THE FAMILY COURT ACT, PARAGRAPH (A) OF SUBDIVISION FIVE OF SECTION  
11 720.35 OF THE CRIMINAL PROCEDURE LAW AND PARAGRAPH (A) OF SUBDIVISION  
12 TWO OF SECTION 725.15 OF THE CRIMINAL PROCEDURE LAW.

13 12-A. TO ESTABLISH AND PROVIDE FOR THE IMPLEMENTATION OF A COURSE OF  
14 TRAINING TO BE COMPLETED BY ALL STAFF MEMBERS AND EMPLOYEES RESPONSIBLE  
15 FOR THE CARE, CUSTODY, TREATMENT, HOUSING, EDUCATION, REHABILITATION OR  
16 GUIDANCE OF CHILDREN IN FACILITIES IN WHICH CHILDREN ARE PLACED OR  
17 COMMITTED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES. THE COMMISSION-  
18 ER OF SUCH OFFICE SHALL ESTABLISH PROGRAMS FOR PREEMPLOYMENT TRAINING  
19 AND IN SERVICE STAFF DEVELOPMENT AND TRAINING. ALL SUCH TRAINING SHALL  
20 INCLUDE INSTRUCTION IN CHILD ABUSE AND MALTREATMENT PREVENTION AND IDEN-  
21 TIFICATION; STAFF ABUSE PREVENTION AND IDENTIFICATION; SAFETY AND SECU-  
22 RITY PROCEDURES; THE PRINCIPLES OF CHILD DEVELOPMENT; THE USE OF PHYS-  
23 ICAL INTERVENTION; TECHNIQUES OF GROUP AND INDIVIDUAL CHILD MANAGEMENT;  
24 GANG AWARENESS; ABSENT WITHOUT LEAVE PROCEDURES; CONFLICT RESOLUTION;  
25 AND THE LAWS, RULES AND REGULATIONS GOVERNING THE PROTECTION OF CHILDREN  
26 FROM ABUSE AND MALTREATMENT. SUCH COMMISSIONER SHALL ENSURE THAT ALL  
27 TRAINING CONDUCTED PURSUANT TO THIS SUBDIVISION IS EVIDENCE BASED, AND  
28 EVALUATED AND UPDATED ON AN ANNUAL BASIS. THE FAILURE TO PROVIDE THE  
29 TRAINING REQUIRED BY THIS SUBDIVISION SHALL CONSTITUTE NEGLECT OF DUTY  
30 FOR WHICH THE GOVERNOR MAY REMOVE THE COMMISSIONER OF CHILDREN AND FAMI-  
31 LY SERVICES FROM OFFICE.

32 S 4. Section 501-c of the executive law is amended by adding a new  
33 subdivision 3 to read as follows:

34 3. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION,  
35 THE RECORDS AND FILES INCLUDING, BUT NOT LIMITED TO, UNUSUAL INCIDENT  
36 REPORTS, MENTAL HEALTH AND DEVELOPMENTAL DISABILITY REPORTS, AND  
37 PROGRESS REPORTS, OF EACH JUVENILE DELINQUENT, JUVENILE OFFENDER OR  
38 YOUTHFUL OFFENDER PLACED WITH OR COMMITTED TO THE CUSTODY OF THE OFFICE  
39 OF CHILDREN AND FAMILY SERVICES SHALL BE MADE AVAILABLE:

40 (A) TO THE STAFF MEMBERS AND EMPLOYEES OF THE FACILITY, WHETHER OPER-  
41 ATED BY SUCH OFFICE OR NOT, IN WHICH THE DELINQUENT OR OFFENDER IS  
42 PLACED OR COMMITTED, WHEN THE STAFF MEMBER OR EMPLOYEE IS RESPONSIBLE  
43 FOR THE CARE, CUSTODY, TREATMENT, HOUSING, EDUCATION, REHABILITATION OR  
44 GUIDANCE OF THE AFFECTED YOUTH;

45 (B) IN THE EVENT SUCH DELINQUENT OR OFFENDER ENGAGES IN CONDUCT OR  
46 COMMITS AN ACT WHICH WOULD CONSTITUTE A CRIME DEFINED IN THE PENAL LAW  
47 IF THE YOUTH WAS AN ADULT OR COMMITS A CRIME DEFINED IN THE PENAL LAW,  
48 TO THE COURT, THE PRESENTMENT AGENCY OR DISTRICT ATTORNEY, AND THE  
49 ATTORNEY REPRESENTING THE YOUTH UPON THE FILING OF CHARGES AGAINST THE  
50 YOUTH RELATING TO SUCH CRIME; AND

51 (C) TO ANY FOSTER PARENTS HAVING CUSTODY OF SUCH DELINQUENT OR OFFEN-  
52 DER AFTER RELEASE FROM THE CUSTODY OF THE OFFICE OF CHILDREN AND FAMILY  
53 SERVICES, EXCLUDING MENTAL HEALTH AND DEVELOPMENTAL DISABILITY REPORTS.

54 S 5. The executive law is amended by adding a new section 501-i to  
55 read as follows:

1 S 501-I. CUSTODY, CONTROL AND DISCHARGE OF DETAINED YOUTH. 1. PLACE-  
2 MENT. THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL PLACE EACH YOUTH  
3 COMMITTED TO ITS CUSTODY UPON THE BASIS OF SUCH YOUTH'S RISK ASSESSMENT  
4 VALUE AS SET FORTH IN SUBDIVISION THREE OF THIS SECTION. PROVIDED, THAT  
5 NO YOUTH CONVICTED OF OR ADJUDICATED AS HAVING COMMITTED A DESIGNATED  
6 FELONY, OR FOUND TO HAVE COMMITTED TWO OR MORE LEVEL C RULE VIOLATIONS  
7 WHILE IN CUSTODY, OR FOUND TO HAVE COMMITTED FOUR OR MORE LEVEL B RULE  
8 VIOLATIONS WITHIN THE PREVIOUS THREE MONTHS SHALL BE AUTHORIZED TO BE  
9 PLACED IN ANY PROGRAM OR FACILITY THAT IS NOT DESIGNATED AS A SECURE  
10 FACILITY. FURTHERMORE, NO YOUTH HAVING A RISK LEVEL OF III SHALL BE  
11 PLACED IN ANY PROGRAM LICENSED, REGISTERED OR CERTIFIED BY THE OFFICE OF  
12 CHILDREN AND FAMILY SERVICES WHICH IS NOT A SECURE FACILITY.

13 2. MOVEMENT TO LOWER LEVEL OF CUSTODY. PRIOR TO THE MOVEMENT OF ANY  
14 YOUTH TO A LOWER LEVEL OF CUSTODY, A RISK ASSESSMENT SHALL BE CONDUCTED  
15 FOR SUCH YOUTH. SUCH ASSESSMENT SHALL BE COMPLETED BY THE STAFF CHARGED  
16 WITH THE DAILY CARE AND CUSTODY OF THE YOUTH. UPON COMPLETION OF A RISK  
17 ASSESSMENT OF A YOUTH, THE FACILITY OR PROGRAM WHICH WILL RECEIVE SUCH  
18 YOUTH SHALL VERIFY WHETHER IT MEETS THE STAFFING REQUIREMENTS OF SUBDI-  
19 VISION SIX OF THIS SECTION.

20 3. RISK ASSESSMENT. THE COMMISSIONER OF CHILDREN AND FAMILY SERVICES,  
21 OR HIS OR HER DESIGNEE, SHALL ESTABLISH A RISK ASSESSMENT VALUE FOR EACH  
22 YOUTH COMMITTED TO THE CUSTODY OF THE OFFICE OF CHILDREN AND FAMILY  
23 SERVICES. THE RISK ASSESSMENT VALUE OF EACH YOUTH SHALL BE DERIVED BY  
24 ADDING THE YOUTH'S FACTORS FOR FACILITY RULE VIOLATIONS TO HIS OR HER  
25 PRIOR OFFENSE HISTORY, AND SUBTRACTING THEREFROM HIS OR HER MITIGATING  
26 FACTORS.

27 (A) FACILITY RULE FACTORS SHALL BE DETERMINED BY:

28 (I) THE NUMBER OF LEVEL B RULE VIOLATIONS MULTIPLIED BY TWO; AND

29 (II) THE NUMBER OF LEVEL C RULE VIOLATIONS MULTIPLIED BY THREE.

30 (B) PRIOR OFFENSE HISTORY FACTOR SHALL BE DETERMINED BY:

31 (I) THE NUMBER OF OPEN OR PRIOR JUVENILE DELINQUENCY DETERMINATIONS  
32 WITHIN THE PREVIOUS THREE YEARS: ONE POINT PER OFFENSE, BUT NOT TO  
33 EXCEED THREE POINTS;

34 (II) THE NUMBER OF OFFENSES PENDING PROSECUTION BY THE COUNTY ATTOR-  
35 NEY: ONE POINT PER OFFENSE, BUT NOT TO EXCEED THREE POINTS;

36 (III) A PENDING FAMILY COURT FELONY OFFENSE: FOUR POINTS;

37 (IV) A PENDING FAMILY COURT MISDEMEANOR OFFENSE: ONE POINT PER  
38 OFFENSE, BUT NOT TO EXCEED THREE POINTS;

39 (V) A PAST FELONY ADJUDICATION WITHIN THE PREVIOUS THREE YEARS: FIVE  
40 POINTS;

41 (VI) TWO OR MORE MISDEMEANOR ADJUDICATIONS WITHIN THE PREVIOUS THREE  
42 YEARS: THREE POINTS; AND

43 (VII) ONE MISDEMEANOR ADJUDICATION WITHIN THE PREVIOUS THREE YEARS:  
44 ONE POINT.

45 (C) MITIGATING FACTOR SHALL BE DETERMINED BY:

46 (I) THE LACK OF PRIOR ARRESTS OR ADJUDICATIONS: ONE POINT;

47 (II) NOT BEING SUBJECT TO A PERSON IN NEED OF SUPERVISION PROCEEDING  
48 WITHIN THE PREVIOUS THREE YEARS: ONE POINT;

49 (III) CURRENTLY ACTIVELY COOPERATING IN COUNSELING, PREVENTION,  
50 SERVICES OR A PROGRAM: ONE POINT.

51 4. DEFINITIONS. AS USED IN THIS ARTICLE:

52 (A) "DESIGNATED FELONY" SHALL MEAN AND INCLUDE ANY OF THE FOLLOWING  
53 FELONIES DEFINED IN THE PENAL LAW: MURDER IN THE FIRST DEGREE, MURDER IN  
54 THE SECOND DEGREE, MANSLAUGHTER IN THE FIRST DEGREE, MANSLAUGHTER IN THE  
55 SECOND DEGREE, KIDNAPPING IN THE FIRST DEGREE, ARSON IN THE FIRST  
56 DEGREE, ASSAULT IN THE FIRST DEGREE, GANG ASSAULT IN THE FIRST DEGREE,

1 ARSON IN THE SECOND DEGREE, ROBBERY IN THE FIRST DEGREE, GANG ASSAULT IN  
2 THE SECOND DEGREE, AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE, RAPE IN  
3 THE FIRST DEGREE, CRIMINAL SEXUAL ACT IN THE FIRST DEGREE, BURGLARY IN  
4 THE FIRST DEGREE.

5 (B) "DESIGNATED RISK LEVEL" SHALL MEAN AN ASSESSMENT OF EACH YOUTH  
6 COMMITTED TO THE CUSTODY OF THE OFFICE OF CHILDREN AND FAMILY SERVICES,  
7 IN WHICH, IN LIGHT OF ALL AVAILABLE RECORDS, THE NUMBER AND TYPES OF  
8 OFFENSES AND RULE VIOLATIONS COMMITTED BY SUCH YOUTH WHILE IN THE CARE  
9 AND CUSTODY OF THE OFFICE OF CHILDREN AND FAMILY SERVICES AND IN ANY  
10 PROGRAM LICENSED, REGISTERED OR CERTIFIED BY SUCH OFFICE, AND PREVIOUS  
11 CRIMINAL AND JUVENILE DELINQUENCY DETERMINATIONS, SUCH YOUTH IS DETER-  
12 MINED TO PRESENT A LOW, MODERATE OR HIGH RISK OF COMMITTING ANOTHER  
13 CRIME DEFINED IN THE PENAL LAW OR WHICH WOULD CONSTITUTE SUCH A CRIME IF  
14 COMMITTED BY AN ADULT, OR POSES A THREAT TO THE SAFETY OF HIMSELF OR  
15 HERSELF OR OTHERS.

16 (I) "RISK LEVEL I" MEANS A YOUTH HAS A LOW RISK OF REPEATING OR  
17 COMMITTING ADDITIONAL OFFENSES OR RULE VIOLATIONS, OR POSES NO DANGER TO  
18 PUBLIC SAFETY. A YOUTH DETERMINED TO HAVE A RISK LEVEL OF I SHALL HAVE A  
19 RISK FACTOR OF THREE POINTS OR LESS.

20 (II) "RISK LEVEL II" MEANS A YOUTH HAS A MODERATE RISK OF REPEATING OR  
21 COMMITTING ADDITIONAL OFFENSES OR RULE VIOLATIONS, OR POSES A MODERATE  
22 THREAT TO PUBLIC SAFETY. A YOUTH DETERMINED TO HAVE A RISK LEVEL OF II  
23 SHALL HAVE A RISK FACTOR OF BETWEEN FOUR AND EIGHT POINTS.

24 (III) "RISK LEVEL III" MEANS A YOUTH HAS A HIGH RISK OF REPEATING OR  
25 COMMITTING ADDITIONAL OFFENSES OR RULE VIOLATIONS, OR POSES A SERIOUS  
26 THREAT TO PUBLIC SAFETY. A YOUTH DETERMINED TO BE A RISK LEVEL OF III  
27 SHALL HAVE A RISK FACTOR OF NINE OR MORE POINTS.

28 (C) "EGREGIOUS ACT" SHALL MEAN AN ACT WHICH IS CONSPICUOUSLY OFFEN-  
29 SIVE, INTENTIONAL OR BLATANT.

30 (D) "PERSISTENT PATTERN" SHALL MEAN A COURSE OF CONDUCT THAT IS INTEN-  
31 TIONALLY REPETITIVE.

32 5. RULE VIOLATIONS. (A) A YOUTH IS GUILTY OF A LEVEL B VIOLATION WHEN  
33 HE OR SHE:

34 (I) ATTEMPTS TO, CONSPIRES TO OR ACTS AS AN ACCESSORY TO AN ESCAPE  
35 ATTEMPT FROM ANY FACILITY, PROGRAM OR CUSTODY;

36 (II) WITHHOLDS INFORMATION ABOUT AN ATTEMPTED ESCAPE OR ABSENCE WITH-  
37 OUT LEAVE;

38 (III) ENGAGES IN ANY VIOLENT CONDUCT INVOLVING THE THREAT OF VIOLENCE;

39 (IV) PRACTICES OR INSTRUCTS OTHERS IN MARTIAL ARTS, SPARRING OR SELF  
40 DEFENSE TECHNIQUES;

41 (V) ENGAGES IN GANG-RELATED HAND, VERBAL OR WRITTEN COMMUNICATION;

42 (VI) INTENTIONALLY EXPOSES THE PRIVATE PARTS OF THEIR BODIES;

43 (VII) MAKES ANY THREAT VERBALLY, IN WRITING OR BY GESTURE TO ANY  
44 PERSON;

45 (VIII) POSSESSES UNAUTHORIZED SECURITY-RELATED EQUIPMENT SUCH AS KEYS,  
46 VEHICULAR KEYS, COMMUNICATION DEVICES OR RESTRAINT EQUIPMENT;

47 (IX) MAKES, USES, POSSESSES, SELLS OR EXCHANGES, OR IS UNDER THE  
48 INFLUENCE OF ANY ALCOHOLIC BEVERAGE OR INTOXICANT;

49 (X) MAKES, USES, POSSESSES, SELLS OR EXCHANGES, OR IS UNDER THE INFLU-  
50 ENCE OF ANY NARCOTIC, NARCOTIC PARAPHERNALIA OR CONTROLLED SUBSTANCE;

51 (XI) POSSESSES OUTDATED OR UNAUTHORIZED TYPES OR QUANTITIES OF MEDICA-  
52 TION;

53 (XII) SELLS OUTDATED OR UNAUTHORIZED TYPES OR QUANTITIES OF MEDICA-  
54 TION;

1 (XIII) ATTEMPTS TO SMUGGLE OR ATTEMPTS TO SOLICIT OTHERS TO SMUGGLE  
2 ANY ITEM INTO OR OUT OF A FACILITY OR PROGRAM OR FROM ONE FACILITY OR  
3 PROGRAM AREA TO ANOTHER;  
4 (XIV) ENGAGES IN ANY VERBAL BEHAVIOR WHICH INTERFERES WITH THE SECURE  
5 AND ORDERLY OPERATION OF THE FACILITY;  
6 (XV) ENGAGES IN ANY VERBAL BEHAVIOR WHICH MAY RESULT IN INJURY TO  
7 STAFF OR RESIDENTS;  
8 (XVI) ENGAGES IN ANY PHYSICAL, PERSISTENT OR EGREGIOUS BEHAVIOR WHICH  
9 INTERFERES WITH THE SECURE AND ORDERLY OPERATION OF THE FACILITY;  
10 (XVII) ENGAGES IN ANY PHYSICAL, PERSISTENT OR EGREGIOUS BEHAVIOR WHICH  
11 MAY RESULT IN INJURY TO STAFF OR RESIDENTS;  
12 (XVIII) SPITS, URINATES OR DEFECATES ON THE FLOOR OR ANY OTHER AREA;  
13 (XIX) THROWS URINE OR FECES OR SANITARY ITEMS;  
14 (XX) FAILS TO COMPLY OR OTHERWISE DISRUPTS FACILITY AND PROGRAM COUNT  
15 PROCEDURES;  
16 (XXI) MUTILATES OR DEFACES HIS OR HER BODY, OR ENGAGES IN THE MUTILA-  
17 TION OR DEFAACEMENT OF ANOTHER PERSON'S BODY; OR  
18 (XXII) ENGAGES IN A PERSISTENT PATTERN OF INFRACTIONS AND FAILS TO  
19 RESPOND TO SANCTIONS PREVIOUSLY IMPOSED BY AN INDIVIDUAL CHARGED WITH  
20 SUCH YOUTH'S CARE OR CUSTODY.  
21 (B) A YOUTH IS GUILTY OF A LEVEL C VIOLATION WHEN HE OR SHE:  
22 (I) COMMITS OR ATTEMPTS TO COMMIT ANY OFFENSE DEFINED IN THE PENAL  
23 LAW;  
24 (II) STARTS OR ATTEMPTS TO START A FIRE, WITHOUT AUTHORIZATION;  
25 (III) CAUSES OR ATTEMPTS TO CAUSE AN EXPLOSION;  
26 (IV) POSSESSES AN EXPLOSIVE DEVICE OR MATERIALS WHICH CAN BE USED TO  
27 MAKE AN EXPLOSIVE DEVICE;  
28 (V) INFLECTS OR ATTEMPTS TO INFLECT BODILY HARM UPON ANOTHER RESIDENT,  
29 A STAFF MEMBER OR ANY OTHER PERSON;  
30 (VI) ENGAGES IN FIGHTING;  
31 (VII) CONSPIRES OR TAKES ANY ACTION WHICH IS INTENDED TO OR RESULTS IN  
32 THE TAKEOVER OF ANY AREA OF A FACILITY OR PROGRAM, OR, ACTING IN A  
33 GROUP, ENGAGES IN ANY VIOLENT CONDUCT OR CONDUCT INVOLVING THE THREAT OF  
34 VIOLENCE;  
35 (VIII) ENGAGES WITH OTHERS IN ANY VIOLENT CONDUCT OR THREAT OF  
36 VIOLENCE;  
37 (IX) LEADS, ORGANIZES OR URGES OTHER RESIDENTS TO PARTICIPATE IN  
38 ACTIONS DETRIMENTAL TO THE ORDER OF A FACILITY OR PROGRAM;  
39 (X) ENGAGES IN OR ENCOURAGES OTHERS TO ENGAGE IN UNAUTHORIZED ORGAN-  
40 IZATIONAL ACTIVITIES OR MEETINGS;  
41 (XI) DISPLAYS, WEARS, POSSESSES, DISTRIBUTES OR USES UNAUTHORIZED  
42 ORGANIZATIONAL INSIGNIA OR MATERIALS;  
43 (XII) MAKES, POSSESSES, SELLS, EXCHANGES OR USES ANY GUN, FIREARM OR  
44 AMMUNITION, KNIFE, RAZOR, SHARPENED INSTRUMENT, TOOL OR OTHER ITEM CLAS-  
45 SIFIED AS A WEAPON BY USE OR APPEARANCE;  
46 (XIII) CONSPIRES TO, IS AN ACCESSORY TO OR COMMITS ESCAPE FROM ANY  
47 PROGRAM OR CUSTODY, OR WITHHOLDS INFORMATION ABOUT AN ESCAPE OR ABSENCE  
48 WITHOUT LEAVE;  
49 (XIV) INTENTIONALLY FAILS OR ATTEMPTS TO FAIL TO RETURN AT OR BEFORE  
50 THE TIME PRESCRIBED FOR HIS OR HER RETURN;  
51 (XV) ENGAGES IN, ENCOURAGES, SOLICITS OR ATTEMPTS TO FORCE OTHERS TO  
52 ENGAGE IN SEXUAL ACTS OR GESTURES;  
53 (XVI) TAMPERS WITH OR THREATENS WITNESSES OR INFORMANTS IN ANY INVES-  
54 TIGATION; OR  
55 (XVII) POSSESSES TOOLS, CULINARY INSTRUMENTS OR OTHER ITEMS THAT MAY  
56 BE CLASSIFIED AS WEAPONS BY USE OR APPEARANCE WITHOUT AUTHORIZATION.

1 6. STAFFING. PROGRAMS OPERATED, LICENSED, CERTIFIED OR REGISTERED BY  
2 THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL COMPLY WITH THE FOLLOW-  
3 ING STAFFING REQUIREMENTS:

4 (A) THOSE PROGRAMS ACCEPTING YOUTHS WITH RISK LEVEL I ASSESSMENTS  
5 SHALL HAVE STAFFING SUFFICIENT TO ENSURE THE SAFETY OF THE EMPLOYEES AND  
6 RESIDENTS OF THE PROGRAM.

7 (B) THOSE PROGRAMS ACCEPTING YOUTHS WITH RISK LEVEL II ASSESSMENTS  
8 SHALL HAVE STAFFING SUFFICIENT TO ENSURE THAT NO EMPLOYEE SHALL BE  
9 REQUIRED TO SUPERVISE NO MORE THAN ONE SUCH YOUTH, UNLESS THE EMPLOYEE  
10 IS ACCOMPANIED BY NOT LESS THAN ONE OTHER EMPLOYEE OF THE PROGRAM OR  
11 ANOTHER APPROPRIATE PERSON.

12 (C) THOSE PROGRAMS ACCEPTING YOUTHS WITH RISK LEVEL III ASSESSMENTS  
13 SHALL BE SECURE OR LIMITED SECURE FACILITIES.

14 S 6. Subdivision 4 of section 504 of the executive law, as amended by  
15 chapter 687 of the laws of 1993, is amended to read as follows:

16 4. The [division] OFFICE OF CHILDREN AND FAMILY SERVICES shall deter-  
17 mine, SUBJECT TO THE PROVISIONS OF SECTION FIVE HUNDRED ONE-I OF THIS  
18 ARTICLE, the particular [division] OFFICE facility or program in which a  
19 child placed with [the division] SUCH OFFICE shall be cared for, based  
20 upon an evaluation of such child. The [division] OFFICE OF CHILDREN AND  
21 FAMILY SERVICES shall, SUBJECT TO THE PROVISIONS OF SECTION FIVE HUNDRED  
22 ONE-I OF THIS ARTICLE AND AFTER A COMPLETE REVIEW OF THE RECORDS AND  
23 FILES OF A CHILD, also have authority to discharge or conditionally  
24 release children placed with it and to transfer such children from a  
25 limited secure or non-secure facility to any other limited secure or  
26 non-secure facility, when the interest of such children requires such  
27 action; provided that a child transferred to a non-secure facility from  
28 a limited secure facility may be returned to a limited secure facility  
29 upon a determination by the [division] OFFICE that, for any reason, care  
30 and treatment at the non-secure facility is no longer suitable.  
31 PROVIDED, HOWEVER, THAT NO SUCH DISCHARGE, RELEASE OR TRANSFER SHALL BE  
32 AUTHORIZED IF THE CHILD'S RECORDS AND FILES INCLUDE (A) TWO OR MORE  
33 LEVEL C RULE VIOLATIONS WITHIN THREE MONTHS PRIOR TO A PROPOSED PLACE-  
34 MENT IN A LESS SECURE FACILITY, OR (B) FOUR OR MORE LEVEL B RULE  
35 VIOLATIONS WITHIN THREE MONTHS PRIOR TO A PROPOSED PLACEMENT IN A LESS  
36 SECURE FACILITY, OR (C) NOTATION OF ANY CONDUCT OR ACT COMMITTED BY SUCH  
37 CHILD WHICH WOULD CONSTITUTE A CRIME DEFINED IN THE PENAL LAW IF COMMIT-  
38 TED BY AN ADULT.

39 S 7. Section 507-a of the executive law is amended by adding a new  
40 subdivision 6 to read as follows:

41 6. THE OFFICE OF CHILDREN AND FAMILY SERVICES NOT LESS THAN TEN DAYS  
42 BEFORE THE MOVEMENT OF ANY YOUTH, COMMITTED TO THE CUSTODY OR SUPER-  
43 VISION OF SUCH OFFICE, TO ANY FACILITY OR PROGRAM OPERATED, LICENSED,  
44 REGISTERED, CERTIFIED OR AUTHORIZED BY THE OFFICE, SHALL PROVIDE NOTICE  
45 OF THE MOVEMENT OF SUCH YOUTH TO THE DIVISION OF STATE POLICE AND THE  
46 LOCAL LAW ENFORCEMENT AGENCY HAVING JURISDICTION OVER THE FACILITY OR  
47 PROGRAM TO WHICH THE YOUTH IS TO BE MOVED. SUCH NOTICE SHALL INCLUDE,  
48 BUT NOT BE LIMITED TO, REPORTS OF THE YOUTH'S PRIOR ASSAULTS, ACTS OF  
49 VIOLENCE, ATTEMPTED SUICIDES, ESCAPES AND ATTEMPTED ESCAPES WHILE IN THE  
50 CARE AND CUSTODY OF THE OFFICE, AND CRIMINAL CHARGES.

51 S 8. Title 2 of article 19-G of the executive law is amended by adding  
52 a new section 510 to read as follows:

53 S 510. REPORTS OF YOUTH CRIMINAL ACTIVITY; REQUIRED. 1. (A) EVERY  
54 OFFICER AND EMPLOYEE OF A FACILITY OR PROGRAM, THAT IS SUBJECT TO THE  
55 PROVISIONS OF THIS TITLE, SHALL REPORT OR CAUSE A REPORT TO BE MADE TO A  
56 LAW ENFORCEMENT AGENCY HAVING JURISDICTION WHEN SUCH OFFICER OR EMPLOYEE

HAS REASONABLE CAUSE TO SUSPECT BASED UPON PERSONAL KNOWLEDGE OF FACTS, CONDITIONS OR CIRCUMSTANCES THAT A YOUTH IN SUCH FACILITY OR PROGRAM HAS COMMITTED AN ACT, WHICH IF THE YOUTH WAS AN ADULT, WOULD BE A CRIME DEFINED IN THE PENAL LAW, OR HAS COMMITTED A CRIME DEFINED IN THE PENAL LAW.

(B) AFTER SUBMITTING A REPORT TO THE LAW ENFORCEMENT AGENCY HAVING JURISDICTION, THE OFFICER AND EMPLOYEE SHALL PROVIDE NOTICE THEREOF TO HIS OR HER EMPLOYER AND TO THE OFFICE OF CHILDREN AND FAMILY SERVICES. NEITHER OPERATOR OF A FACILITY OR PROGRAM THAT IS SUBJECT TO THE PROVISIONS OF THIS TITLE, NOR THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL DENY A LAW ENFORCEMENT AGENCY ACCESS TO ANY PROGRAM, FACILITY, OFFICER, EMPLOYEE OR YOUTH WHILE SUCH AGENCY IS IN THE COURSE OF AN INVESTIGATION RELATING TO A REPORT SUBMITTED PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION.

(C) NO OPERATOR OF A PROGRAM OR FACILITY LICENSED, REGISTERED OR CERTIFIED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL TAKE ANY RETALIATORY PERSONNEL ACTION, AS SUCH TERM IS DEFINED IN PARAGRAPH (E) OF SUBDIVISION ONE OF SECTION SEVEN HUNDRED FORTY OF THE LABOR LAW, AGAINST AN EMPLOYEE BECAUSE SUCH EMPLOYEE BELIEVES THAT HE OR SHE HAS REASONABLE CAUSE TO SUSPECT THAT A YOUTH HAS COMMITTED A CRIMINAL ACT AND THAT EMPLOYEE THEREFORE MAKES A REPORT IN ACCORDANCE WITH THIS TITLE. NO FACILITY OR PROGRAM, LICENSED, REGISTERED OR CERTIFIED BY SUCH OFFICE SHALL IMPOSE ANY CONDITIONS, INCLUDING PRIOR APPROVAL OR PRIOR NOTIFICATION, UPON A MEMBER OF ITS STAFF SPECIFICALLY REQUIRED TO REPORT UNDER THIS TITLE. AT THE TIME OF THE MAKING OF A REPORT, OR AT ANY TIME THEREAFTER, SUCH PERSON OR OFFICIAL MAY EXERCISE THE RIGHT TO REQUEST THE FINDINGS OF AN INVESTIGATION MADE PURSUANT TO THIS SECTION.

2. ANY PERSON, OFFICIAL OR INSTITUTION REQUIRED BY THIS TITLE TO REPORT A YOUTH'S CRIMINAL ACT WHO WILLFULLY CONCEALS THE COMMISSION OF SUCH CRIME SHALL BE GUILTY OF A CLASS A MISDEMEANOR.

3. ANY PERSON, OFFICIAL OR INSTITUTION REQUIRED BY THIS TITLE TO REPORT A YOUTH'S CRIMINAL ACT WHO KNOWINGLY CONCEALS THE COMMISSION OF SUCH CRIME SHALL BE CIVILLY LIABLE FOR THE DAMAGES PROXIMATELY CAUSED BY SUCH CONCEALMENT.

4. THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL INCLUDE INSTRUCTION ON THE PROVISIONS OF THIS SECTION AS PART OF THE TRAINING REQUIRED BY SUBDIVISION TWELVE-A OF SECTION FIVE HUNDRED ONE OF THIS ARTICLE.

S 9. Subdivision 1 of section 510-c of the executive law, as amended by chapter 465 of the laws of 1992, is amended to read as follows:

1. The [division] OFFICE OF CHILDREN AND FAMILY SERVICES may, SUBJECT TO THE PROVISIONS OF SECTION FIVE HUNDRED ONE-I OF THIS ARTICLE AND AFTER A COMPLETE REVIEW OF THE RECORDS AND THE FILES OF A CHILD, discharge from its custody any child placed with the [division] OFFICE whenever it deems such discharge to be in the best interest of the child and there is reasonable probability that the child can be discharged without endangering the public safety; provided, however, that no child while absent from a division facility without the consent of the director of such facility shall be discharged by the [division] OFFICE solely by reason of the absence[, and]; provided further that no child in the custody of the division and transferred to the department of mental hygiene, while absent from a department of mental hygiene facility without the consent of the superintendent or director of such facility, shall be discharged by the division; AND PROVIDED, FURTHER, THAT NO CHILD SHALL BE DISCHARGED IF HIS OR HER RECORDS AND FILES INCLUDE (A) TWO OR MORE LEVEL C RULE VIOLATIONS WITHIN THREE MONTHS PRIOR TO A PROPOSED PLACEMENT IN A LESS SECURE FACILITY, OR (B) FOUR OR MORE LEVEL

1 B RULE VIOLATIONS WITHIN THREE MONTHS PRIOR TO A PROPOSED PLACEMENT IN A  
2 LESS SECURE FACILITY, OR (C) NOTATION OF ANY CONDUCT OR ACT COMMITTED BY  
3 SUCH CHILD WHICH WOULD CONSTITUTE A DESIGNATED FELONY CRIME DEFINED IN  
4 THE PENAL LAW IF COMMITTED BY AN ADULT.

5 S 10. Section 837 of the executive law is amended by adding a new  
6 subdivision 20 to read as follows:

7 20. ESTABLISH RULES AND REGULATIONS REQUIRING, UPON REQUEST OF THE  
8 OPERATOR OF A FACILITY OR PROGRAM LICENSED, REGISTERED OR CERTIFIED BY  
9 THE OFFICE OF CHILDREN AND FAMILY SERVICES, WHEN A YOUTH HAS ABSENTED  
10 HIMSELF OR HERSELF FROM SUCH FACILITY OR PROGRAM WITHOUT AUTHORIZATION,  
11 THAT A POLICE OFFICER HAVING JURISDICTION ESCORT AN EMPLOYEE OF SUCH  
12 FACILITY OR PROGRAM TO THE ABSENT YOUTH'S PLACE OF RESIDENCE TO INVESTI-  
13 GATE WHERE SUCH YOUTH HAS FLED. EVERY SUCH POLICE OFFICER SHALL ASSIST  
14 THE EMPLOYEE IN TAKING THE YOUTH INTO CUSTODY AND RETURNING THE YOUTH TO  
15 THE FACILITY OR PROGRAM TO WHICH THE YOUTH IS ASSIGNED.

16 S 11. Section 166 of the family court act is amended to read as  
17 follows:

18 S 166. Privacy of records. (A) The records of any proceeding in the  
19 family court shall not be open to indiscriminate public inspection.  
20 However, the court in its discretion in any case may permit the  
21 inspection of any papers or records. Any duly authorized agency, associ-  
22 ation, society or institution to which a child is committed may cause an  
23 inspection of the record of investigation to be had and may in the  
24 discretion of the court obtain a copy of the whole or part of such  
25 record.

26 (B) NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION (A) OF THIS SECTION,  
27 THE RECORDS OF EVERY JUVENILE DELINQUENCY PROCEEDING IN THE FAMILY COURT  
28 OF A PERSON, WHO IS PLACED WITH OR COMMITTED TO THE CUSTODY OF THE  
29 OFFICE OF CHILDREN AND FAMILY SERVICES, SHALL BE OPEN TO AND BE  
30 PROVIDED:

31 (1) TO THE STAFF MEMBERS AND EMPLOYEES OF THE FACILITY, WHETHER OPER-  
32 ATED BY SUCH OFFICE OR NOT, IN WHICH SUCH PERSON IS PLACED OR COMMITTED  
33 AS A JUVENILE DELINQUENT, JUVENILE OFFENDER OR YOUTHFUL OFFENDER BY THE  
34 OFFICE OF CHILDREN AND FAMILY SERVICES WHEN THE STAFF MEMBER OR EMPLOYEE  
35 IS RESPONSIBLE FOR THE CARE, CUSTODY, TREATMENT, HOUSING, EDUCATION,  
36 REHABILITATION OR GUIDANCE OF THE PERSON;

37 (2) IN THE EVENT SUCH PERSON ENGAGES IN CONDUCT OR COMMITS AN ACT  
38 WHICH WOULD CONSTITUTE A CRIME DEFINED IN THE PENAL LAW IF THE PERSON  
39 WAS AN ADULT OR COMMITS A CRIME DEFINED IN THE PENAL LAW, TO THE COURT,  
40 THE PRESENTMENT AGENCY OR DISTRICT ATTORNEY, AND SUCH PERSON'S ATTORNEY  
41 UPON THE FILING OF CHARGES AGAINST THE PERSON RELATING TO SUCH CRIME;  
42 AND

43 (3) TO ANY FOSTER PARENTS HAVING CUSTODY OF SUCH PERSON AFTER RELEASE  
44 FROM THE CUSTODY OF THE OFFICE OF CHILDREN AND FAMILY SERVICES.

45 S 12. Section 720.35 of the criminal procedure law is amended by  
46 adding a new subdivision 5 to read as follows:

47 5. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION,  
48 ALL OFFICIAL RECORDS AND PAPERS OF A YOUTHFUL OFFENDER, WHO IS COMMITTED  
49 TO THE CUSTODY OF THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL BE  
50 OPEN TO AND BE PROVIDED TO:

51 (A) THE STAFF MEMBERS AND EMPLOYEES OF THE FACILITY, WHETHER OPERATED  
52 BY SUCH OFFICE OR NOT, IN WHICH THE OFFENDER IS COMMITTED BY THE OFFICE  
53 OF CHILDREN AND FAMILY SERVICES WHEN THE STAFF MEMBER OR EMPLOYEE IS  
54 RESPONSIBLE FOR THE CARE, CUSTODY, TREATMENT, HOUSING, EDUCATION, REHA-  
55 BILITATION OR GUIDANCE OF THE YOUTHFUL OFFENDER;



(B) IN THE EVENT THE YOUTHFUL OFFENDER COMMITS A CRIME DEFINED IN THE PENAL LAW, TO THE COURT, THE DISTRICT ATTORNEY, AND THE YOUTHFUL OFFENDER'S ATTORNEY UPON THE FILING OF CHARGES AGAINST SUCH OFFENDER RELATING TO SUCH CRIME; AND

(C) TO ANY FOSTER PARENTS HAVING CUSTODY OF SUCH YOUTHFUL OFFENDER AFTER RELEASE FROM THE CUSTODY OF THE OFFICE OF CHILDREN AND FAMILY SERVICES.

S 13. Section 725.15 of the criminal procedure law, as amended by chapter 7 of the laws of 2007, is amended to read as follows:

S 725.15 Sealing of records.

1. Except where specifically required or permitted by statute or upon specific authorization of the court that directed removal of an action to the family court all official records and papers of the action up to and including the order of removal, whether on file with the court, a police agency or the division of criminal justice services, are confidential and must not be made available to any person or public or private agency, provided however that availability of copies of any such records and papers on file with the family court shall be governed by provisions that apply to family court records, and further provided that all official records and papers of the action shall be included in those records and reports that may be obtained upon request by the commissioner of mental health or commissioner of [mental retardation and] developmental disabilities, as appropriate; the case review panel; and the attorney general pursuant to section 10.05 of the mental hygiene law.

2. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION, ALL OFFICIAL RECORDS AND PAPERS OF AN ACTION RELATING TO A JUVENILE OFFENDER, WHO IS PLACED WITH THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL BE OPEN TO AND BE PROVIDED:

(A) TO THE STAFF MEMBERS AND EMPLOYEES OF THE FACILITY, WHETHER OPERATED BY SUCH OFFICE OR NOT, IN WHICH THE OFFENDER IS PLACED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES WHEN THE STAFF MEMBER OR EMPLOYEE IS RESPONSIBLE FOR THE CARE, CUSTODY, TREATMENT, HOUSING, EDUCATION, REHABILITATION OR GUIDANCE OF THE JUVENILE OFFENDER;

(B) IN THE EVENT THE JUVENILE OFFENDER ENGAGES IN CONDUCT OR COMMITS AN ACT WHICH WOULD CONSTITUTE A CRIME DEFINED IN THE PENAL LAW IF THE OFFENDER WAS AN ADULT OR COMMITS A CRIME DEFINED IN THE PENAL LAW, TO THE COURT, THE PRESENTMENT AGENCY OR DISTRICT ATTORNEY, AND SUCH OFFENDER'S ATTORNEY UPON THE FILING OF CHARGES AGAINST THE JUVENILE OFFENDER RELATING TO SUCH CRIME; AND

(C) TO ANY FOSTER PARENTS HAVING CUSTODY OF SUCH JUVENILE OFFENDER AFTER RELEASE FROM THE CUSTODY OF THE OFFICE OF CHILDREN AND FAMILY SERVICES.

S 14. Subdivision 2 of section 212 of the judiciary law is amended by adding a new paragraph (t) to read as follows:

(T) ADOPT RULES, ORDERS AND FORMS PROVIDING FOR THE PROVISION OF THE OFFICIAL RECORDS AND PAPERS OF JUVENILE DELINQUENTS, JUVENILE OFFENDERS AND YOUTHFUL OFFENDERS PURSUANT TO SUBDIVISION (A) OF SECTION ONE HUNDRED SIXTY-SIX OF THE FAMILY COURT ACT, SUBDIVISION FIVE OF SECTION 720.35 OF THE CRIMINAL PROCEDURE LAW, AND SUBDIVISION TWO OF SECTION 725.15 OF THE CRIMINAL PROCEDURE LAW.

S 15. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence,

1 paragraph, section or part of this act directly involved in the contro-  
2 versy in which the judgment shall have been rendered.

3 S 16. This act shall take effect on the first of January next succeed-  
4 ing the date on which it shall have become a law; provided that, effec-  
5 tive immediately, any rules and regulations necessary to implement the  
6 provisions of this act on its effective date are authorized to be  
7 promulgated, repealed and/or amended on or before such date.