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

3568

2013-2014 Regular Sessions

I N S E N A T E

February 6, 2013

Introduced by Sens. MONTGOMERY, ADAMS, HASSELL-THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law and the social services law, in relation to establishing the Family Notification and Protection Act

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

Section 1. This act shall be known and may be cited as the "family notification and protection act".

S 2. Subdivision 7 of section 120.90 of the criminal procedure law, as amended by chapter 424 of the laws of 1998, is amended to read as follows:

7. (A) Upon arresting a juvenile offender OR YOUTH AS DEFINED IN SUBDIVISION ONE OF SECTION 720.10 OF THIS CHAPTER, the police officer shall immediately notify the parent or other person legally responsible for his OR HER care or the person with whom he OR SHE is domiciled, that the juvenile offender OR YOUTH has been arrested, and the location of the facility where he OR SHE is being detained, PROVIDED THAT THE POLICE OFFICER NEED NOT NOTIFY THE PARENT OR OTHER PERSON LEGALLY RESPONSIBLE FOR SUCH YOUTH'S CARE OR THE PERSON WITH WHOM HE OR SHE IS DOMICILED WHEN SUCH YOUTH IS NOT ALSO A JUVENILE OFFENDER AND THE NOTIFICATION OF A PARENT OR OTHER PERSON WOULD ENDANGER THE HEALTH OR SAFETY OF SUCH YOUTH.

(B)(I) AFTER MAKING EVERY REASONABLE EFFORT TO GIVE NOTICE TO THE PARENT, OR OTHER PERSON LEGALLY RESPONSIBLE FOR HIS OR HER CARE OR THE PERSON WITH WHOM HE OR SHE IS DOMICILED, THE OFFICER SHALL ISSUE AND SERVE AN APPEARANCE TICKET UPON THE ARRESTED PERSON AND RELEASE HIM OR HER TO THE CUSTODY OF AN ADULT FAMILY MEMBER OR AN UNRELATED ADULT AGE TWENTY-FIVE OR OVER; OR

(II) AFTER MAKING EVERY REASONABLE EFFORT TO LOCATE AN ADULT FAMILY MEMBER OR AN UNRELATED ADULT AGE TWENTY-FIVE OR OVER, IF THERE IS NO ONE

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

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TO WHOM THE OFFICER CAN RELEASE THE ARRESTED PERSON, THE OFFICER SHALL RELEASE THE ARRESTED PERSON UPON ISSUANCE OF AN APPEARANCE TICKET AND PROVIDE THE ARRESTED PERSON WITH A RIDE IN AN OFFICIAL POLICE VEHICLE TO HIS OR HER PLACE OF RESIDENCE, AT THE REQUEST OF THE ARRESTED PERSON, WITHOUT UNNECESSARY DELAY. THE OFFICER MUST INFORM THE YOUTH THAT HE OR SHE MAY REQUEST A RIDE HOME; OR

(III) IF THE ARRESTED PERSON IS LESS THAN NINETEEN YEARS OLD, THE OFFICER MAY TAKE THE YOUTH, IF IT APPEARS THAT SUCH YOUTH IS A SEXUALLY EXPLOITED CHILD AS DEFINED IN PARAGRAPH (A), (B), (C) OR (D) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED FORTY-SEVEN-A OF THE SOCIAL SERVICES LAW, TO AN AVAILABLE SHORT-TERM SAFE HOUSE, BUT ONLY IF THE YOUTH CONSENTS TO BE TAKEN.

S 3. Subdivisions 1, 2 and 6 of section 140.20 of the criminal procedure law, subdivision 1 as amended by chapter 549 of the laws of 1987, paragraphs (a) and (b) of subdivision 1 as amended by chapter 324 of the laws of 1988, paragraph (c) of subdivision 1 as separately amended by chapter 382 of the laws of 1987, subdivision 2 as amended by chapter 550 of the laws of 1987 and subdivision 6 as added by chapter 411 of the laws of 1979, are amended to read as follows:

1. Upon arresting a person without a warrant, a police officer, after performing without unnecessary delay all recording, fingerprinting and other preliminary police duties required in the particular case, must except as otherwise provided in this section, without unnecessary delay bring the arrested person or cause him to be brought before a local criminal court and file therewith an appropriate accusatory instrument charging him with the offense or offenses in question. The arrested person must be brought to the particular local criminal court, or to one of them if there be more than one, designated in section 100.55 as an appropriate court for commencement of the particular action; except that:

(a) If the arrest is for an offense other than a class A, B, C or D felony or a violation of section 130.25, 130.40, 205.10, 205.17, 205.19 or 215.56 of the penal law committed in a town, but not in a village thereof having a village court, and the town court of such town is not available at the time, the arrested person may be brought before the local criminal court of any village within such town or, any adjoining town, village embraced in whole or in part by such adjoining town, or city of the same county; and

(b) If the arrest is for an offense other than a class A, B, C or D felony or a violation of section 130.25, 130.40, 205.10, 205.17, 205.19 or 215.56 of the penal law committed in a village having a village court and such court is not available at the time, the arrested person may be brought before the town court of the town embracing such village or any other village court within such town, or, if such town or village court is not available either, before the local criminal court of any adjoining town, village embraced in whole or in part by such adjoining town, or city of the same county; and

(c) If the arrest is for an offense committed in a city, and the city court thereof is not available at the time, the arrested person may be brought before the local criminal court of any adjoining town or village, or village court embraced by an adjoining town, within the same county as such city; and

(d) If the arrest is for a traffic infraction or for a misdemeanor relating to traffic, the police officer may, instead of bringing the arrested person before the local criminal court of the political subdivision or locality in which the offense was allegedly committed, bring

him before the local criminal court of the same county nearest available by highway travel to the point of arrest; AND

(E) IF THE ARRESTED PERSON IS AT LEAST SIXTEEN YEARS OLD AND LESS THAN NINETEEN YEARS OLD, AND IF THE ARREST IS FOR A NON-VIOLENT CLASS B, C, OR D FELONY (EXCEPT 125.12, 263.05, 263.10, 263.15, 263.30, OR 470.23) OR A VIOLATION OF SECTION 130.25, 130.40, 205.10, 205.17, 205.19 OR 215.56 OF THE PENAL LAW, AND THE LOCAL CRIMINAL COURT IS NOT AVAILABLE:

(I) THE OFFICER SHALL RELEASE THE ARRESTED PERSON TO THE CUSTODY OF HIS OR HER PARENTS, OR OTHER PERSON LEGALLY RESPONSIBLE FOR HIS OR HER CARE, OR THE PERSON WITH WHOM HE OR SHE IS DOMICILED UPON THE ISSUANCE OF AN APPEARANCE TICKET PROVIDED THAT THE OFFICER NEED NOT NOTIFY THE PARENT OR OTHER PERSON LEGALLY RESPONSIBLE FOR THE ARRESTED PERSON'S CARE OR THE PERSON WITH WHOM HE OR SHE IS DOMICILED WHEN THE NOTIFICATION OF A PARENT OR OTHER PERSON WOULD ENDANGER THE HEALTH OR SAFETY OF THE ARRESTED PERSON; OR

(II) AFTER MAKING EVERY REASONABLE EFFORT TO GIVE NOTICE TO THE PARENT, OR OTHER PERSON LEGALLY RESPONSIBLE FOR HIS OR HER CARE OR THE PERSON WITH WHOM HE OR SHE IS DOMICILED, THE OFFICER SHALL ISSUE AND SERVE AN APPEARANCE TICKET UPON THE ARRESTED PERSON AND RELEASE HIM OR HER TO THE CUSTODY OF AN ADULT FAMILY MEMBER OR AN UNRELATED ADULT AGE TWENTY-FIVE OR OVER; OR

(III) AFTER MAKING EVERY REASONABLE EFFORT TO LOCATE AN ADULT FAMILY MEMBER OR AN UNRELATED ADULT AGE TWENTY-FIVE OR OVER, IF THERE IS NO ONE TO WHOM THE OFFICER CAN RELEASE THE ARRESTED PERSON, THE OFFICER SHALL RELEASE THE ARRESTED PERSON UPON ISSUANCE OF AN APPEARANCE TICKET AND PROVIDE THE ARRESTED PERSON WITH A RIDE IN AN OFFICIAL POLICE VEHICLE TO HIS OR HER PLACE OF RESIDENCE, AT THE REQUEST OF THE ARRESTED PERSON, WITHOUT UNNECESSARY DELAY. THE OFFICER MUST INFORM THE YOUTH THAT HE OR SHE MAY REQUEST A RIDE HOME; AND

(F) IF THE ARRESTED PERSON IS LESS THAN NINETEEN YEARS OLD, THE OFFICER MAY TAKE THE YOUTH, IF IT APPEARS THAT SUCH YOUTH IS A SEXUALLY EXPLOITED CHILD AS DEFINED IN PARAGRAPH (A), (B), (C) OR (D) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED FORTY-SEVEN-A OF THE SOCIAL SERVICES LAW, TO AN AVAILABLE SHORT-TERM SAFE HOUSE, BUT ONLY IF THE YOUTH CONSENTS TO BE TAKEN.

(G) IF THE ARRESTED PERSON IS AT LEAST SIXTEEN YEARS OLD AND LESS THAN NINETEEN YEARS OLD AND IF THE ARREST IS FOR AN OFFENSE OTHER THAN A CLASS A, B, C OR D FELONY OR A VIOLATION OF SECTION 130.25, 130.40, 205.10, 205.17, 205.19 OR 215.56 OF THE PENAL LAW, THE OFFICER SHALL ISSUE AND SERVE AN APPEARANCE TICKET, AS PRESCRIBED IN SUBDIVISION FOUR OF SECTION 150.20 AND RELEASE HIM OR HER FROM CUSTODY, AS PRESCRIBED IN PARAGRAPH (E) OF THIS SUBDIVISION.

2. If the arrest is for an offense other than a class A, B, C or D felony or a violation of section 130.25, 130.40, 205.10, 205.17, 205.19 or 215.56 of the penal law, the arrested person need not be brought before a local criminal court as provided in subdivision one, and the procedure may instead be as follows:

(a) A police officer may issue and serve an appearance ticket upon the arrested person and release him from custody, as prescribed in subdivision two of section 150.20; or

(b) The desk officer in charge at a police station, county jail or police headquarters, or any of his superior officers, may, in such place fix pre-arraignment bail and, upon deposit thereof, issue and serve an appearance ticket upon the arrested person and release him from custody, as prescribed in section 150.30.

IF THE ARRESTED PERSON IS OLDER THAN SIXTEEN YEARS OLD BUT LESS THAN NINETEEN YEARS OLD, THE OFFICER SHALL FOLLOW THE PROCEDURE AS PRESCRIBED IN PARAGRAPH (G) OF SUBDIVISION ONE OF THIS SECTION.

6. Upon arresting a juvenile offender OR YOUTH AS DEFINED IN SUBDIVISION ONE OF SECTION 720.10 OF THIS CHAPTER without a warrant, the police officer shall immediately notify the parent or other person legally responsible for his OR HER care or the person with whom he OR SHE is domiciled, that the juvenile offender OR YOUTH has been arrested, and the location of the facility where he is being detained, PROVIDED THAT THE POLICE OFFICER NEED NOT NOTIFY THE PARENT OR OTHER PERSON LEGALLY RESPONSIBLE FOR SUCH YOUTH'S CARE OR THE PERSON WITH WHOM HE OR SHE IS DOMICILED WHEN SUCH YOUTH IS NOT ALSO A JUVENILE OFFENDER AND THE NOTIFICATION OF A PARENT OR OTHER PERSON WOULD ENDANGER THE HEALTH OR SAFETY OF SUCH YOUTH, HOWEVER THE POLICE OFFICER MUST MAKE EVERY REASONABLE EFFORT TO CONTACT AN ADULT FAMILY MEMBER OR AN UNRELATED ADULT OVER THE AGE OF TWENTY-FIVE AS PRESCRIBED IN PARAGRAPH (E) OF SUBDIVISION ONE OF THIS SECTION.

S 4. Section 150.20 of the criminal procedure law is amended by adding a new subdivision 4 to read as follows:

4. UPON ISSUING TO AND SERVING AN APPEARANCE TICKET AS DEFINED IN SUBDIVISION ONE OF SECTION 150.10 OF THIS ARTICLE UPON A YOUTH AS DEFINED IN SUBDIVISION ONE OF SECTION 720.10 OF THIS CHAPTER, THE POLICE OFFICER SHALL NOTIFY THE PARENT OR OTHER PERSON LEGALLY RESPONSIBLE FOR HIS OR HER CARE OR THE PERSON WITH WHOM HE OR SHE IS DOMICILED OR SOME OTHER ADULT AS PROVIDED FOR IN PARAGRAPH (E) OF SUBDIVISION ONE OF SECTION 140.20 OF THIS CHAPTER, THAT SUCH YOUTH HAS BEEN SERVED WITH AN APPEARANCE TICKET, THE TIME SET FORTH IN SUCH APPEARANCE TICKET FOR THE YOUTH'S APPEARANCE BEFORE A CRIMINAL COURT AND THE OFFENSE OF WHICH HE OR SHE IS CHARGED, PROVIDED THAT THE POLICE OFFICER NEED NOT NOTIFY THE PARENT OR OTHER PERSON LEGALLY RESPONSIBLE FOR SUCH YOUTH'S CARE OR THE PERSON WITH WHOM HE OR SHE IS DOMICILED WHEN SUCH YOUTH IS NOT ALSO A JUVENILE OFFENDER AND THE NOTIFICATION OF A PARENT OR OTHER PERSON WOULD ENDANGER THE HEALTH OR SAFETY OF SUCH YOUTH.

S 5. Subdivisions 1 and 2 of section 447-a of the social services law, subdivision 1 as amended by section 1 of part G of chapter 58 of the laws of 2010, subdivision 2 as added by chapter 569 of the laws of 2008, are amended to read as follows:

1. The term "sexually exploited child" means any person under the age of [eighteen] NINETEEN who has been subject to sexual exploitation because he or she:

(a) is the victim of the crime of sex trafficking as defined in section 230.34 of the penal law;

(b) engages in any act as defined in section 230.00 of the penal law;

(c) is a victim of the crime of compelling prostitution as defined in section 230.33 of the penal law;

(d) engages in acts or conduct described in article two hundred sixty-three or section 240.37 of the penal law.

2. The term "short-term safe house" means a residential facility operated by an authorized agency as defined in subdivision ten of section three hundred seventy-one of this article including a residential facility operating as part of an approved runaway program as defined in subdivision four of section five hundred thirty-two-a of the executive law or a not-for-profit agency with experience in providing services to sexually exploited youth and approved in accordance with the regulations of the office of children and family services that provides emergency shelter, services and care to sexually exploited children including

food, shelter, clothing, medical care, counseling and appropriate crisis intervention services at the time they are taken into custody by law enforcement and for the duration of any legal proceeding or proceedings in which they are either the complaining witness or the subject child. The short-term safe house shall also be available at the point in time that a child under the age of [eighteen] NINETEEN has first come into the custody of juvenile detention officials, law enforcement, local jails or the local commissioner of social services or is residing with the local runaway and homeless youth authority.

S 6. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.