

STATE OF NEW YORK

555--A

2017-2018 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2017

Introduced by Sens. YOUNG, DeFRANCISCO, GALLIVAN, HELMING, LARKIN, MARCHIONE, ORTT -- 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 -- reported favorably from said committee and committed to the Committee on Finance -- 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 § 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

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

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1 within such licensed, certified and registered programs, non-profit
2 community based programs and communities throughout the state allowing
3 youths under the office of children and family services' jurisdiction
4 the ability to be rehabilitated and receive skills necessary to inhibit
5 recidivism.

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

8 7-a. To provide for the dissemination of records, files and papers
9 pursuant to subdivision three of section five hundred one-c of this
10 title, paragraph one of subdivision (b) of section one hundred sixty-six
11 of the family court act, paragraph (a) of subdivision five of section
12 720.35 of the criminal procedure law and paragraph (a) of subdivision
13 two of section 725.15 of the criminal procedure law.

14 12-a. To establish and provide for the implementation of a course of
15 training to be completed by all staff members and employees responsible
16 for the care, custody, treatment, housing, education, rehabilitation or
17 guidance of children in facilities in which children are placed or
18 committed by the office of children and family services. The commissioner
19 of such office shall establish programs for preemployment training
20 and in service staff development and training. All such training shall
21 include instruction in child abuse and maltreatment prevention and iden-
22 tification; staff abuse prevention and identification; safety and secu-
23 rity procedures; the principles of child development; the use of phys-
24 ical intervention; techniques of group and individual child management;
25 gang awareness; absent without leave procedures; conflict resolution;
26 and the laws, rules and regulations governing the protection of children
27 from abuse and maltreatment. Such commissioner shall ensure that all
28 training conducted pursuant to this subdivision is evidence based, and
29 evaluated and updated on an annual basis. The failure to provide the
30 training required by this subdivision shall constitute neglect of duty
31 for which the governor may remove the commissioner of children and fami-
32 ly services from office.

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

35 3. Notwithstanding the provisions of subdivision one of this section,
36 the records and files including, but not limited to, unusual incident
37 reports, mental health and developmental disability reports, and
38 progress reports, of each juvenile delinquent, juvenile offender or
39 youthful offender placed with or committed to the custody of the office
40 of children and family services shall be made available:

41 (a) to the staff members and employees of the facility, whether oper-
42 ated by such office or not, in which the delinquent or offender is
43 placed or committed, when the staff member or employee is responsible
44 for the care, custody, treatment, housing, education, rehabilitation or
45 guidance of the affected youth;

46 (b) in the event such delinquent or offender engages in conduct or
47 commits an act which would constitute a crime defined in the penal law
48 if the youth was an adult or commits a crime defined in the penal law,
49 to the court, the presentment agency or district attorney, and the
50 attorney representing the youth upon the filing of charges against the
51 youth relating to such crime; and

52 (c) to any foster parents having custody of such delinquent or offen-
53 der after release from the custody of the office of children and family
54 services, excluding mental health and developmental disability reports.

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

1 § 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 subdivi-
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 defacement 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) Inflicts or attempts to inflict 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 § 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 § 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 § 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 § 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

1 has reasonable cause to suspect based upon personal knowledge of facts,
2 conditions or circumstances that a youth in such facility or program has
3 committed an act, which if the youth was an adult, would be a crime
4 defined in the penal law, or has committed a crime defined in the penal
5 law.

6 (b) After submitting a report to the law enforcement agency having
7 jurisdiction, the officer and employee shall provide notice thereof to
8 his or her employer and to the office of children and family services.
9 Neither operator of a facility or program that is subject to the
10 provisions of this title, nor the office of children and family services
11 shall deny a law enforcement agency access to any program, facility,
12 officer, employee or youth while such agency is in the course of an
13 investigation relating to a report submitted pursuant to paragraph (a)
14 of this subdivision.

15 (c) No operator of a program or facility licensed, registered or
16 certified by the office of children and family services shall take any
17 retaliatory personnel action, as such term is defined in paragraph (e)
18 of subdivision one of section seven hundred forty of the labor law,
19 against an employee because such employee believes that he or she has
20 reasonable cause to suspect that a youth has committed a criminal act
21 and that employee therefore makes a report in accordance with this
22 title. No facility or program, licensed, registered or certified by such
23 office shall impose any conditions, including prior approval or prior
24 notification, upon a member of its staff specifically required to report
25 under this title. At the time of the making of a report, or at any time
26 thereafter, such person or official may exercise the right to request
27 the findings of an investigation made pursuant to this section.

28 2. Any person, official or institution required by this title to
29 report a youth's criminal act who willfully conceals the commission of
30 such crime shall be guilty of a class A misdemeanor.

31 3. Any person, official or institution required by this title to
32 report a youth's criminal act who knowingly conceals the commission of
33 such crime shall be civilly liable for the damages proximately caused by
34 such concealment.

35 4. The office of children and family services shall include instruc-
36 tion on the provisions of this section as part of the training required
37 by subdivision twelve-a of section five hundred one of this article.

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

40 1. The [~~division~~] office of children and family services may, subject
41 to the provisions of section five hundred one-i of this article and
42 after a complete review of the records and the files of a child,
43 discharge from its custody any child placed with the [~~division~~] office
44 whenever it deems such discharge to be in the best interest of the child
45 and there is reasonable probability that the child can be discharged
46 without endangering the public safety; provided, however, that no child
47 while absent from [~~a-division~~] an office facility without the consent of
48 the director of such facility shall be discharged by the [~~division~~]
49 office solely by reason of the absence[~~, and~~]; provided further that no
50 child in the custody of the [~~division~~] office and transferred to the
51 department of mental hygiene, while absent from a department of mental
52 hygiene facility without the consent of the superintendent or director
53 of such facility, shall be discharged by the [~~division~~] office; and
54 provided, further, that no child shall be discharged if his or her
55 records and files include (a) two or more level C rule violations within
56 three months prior to a proposed placement in a less secure facility, or

1 (b) four or more level B rule violations within three months prior to a
2 proposed placement in a less secure facility, or (c) notation of any
3 conduct or act committed by such child which would constitute a desig-
4 nated felony crime defined in the penal law if committed by an adult.

5 § 10. Section 837 of the executive law is amended by adding a new
6 subdivision 22 to read as follows:

7 22. 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 § 11. Section 166 of the family court act is amended to read as
17 follows:

18 § 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 § 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.

§ 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:

§ 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.

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

(w) 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.

§ 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 § 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.