STATE OF NEW YORK

966

2019-2020 Regular Sessions

IN SENATE

January 9, 2019

Introduced by Sens. YOUNG, GALLIVAN, HELMING, ORTT, RANZENHOFER -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

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:

Section 1. Short title. This act shall be known and may be cited as "Renee's law".

§ 2. Legislative findings and declaration. The legislature hereby finds and declares that it is a fundamental purpose of this state's juvenile justice system to provide a safe environment for both the residents and the staff of programs licensed, certified and registered by the office of children and family services. The legislature further finds that a safe environment is ensured by providing staff of programs licensed, certified and registered by such office with adequate training and that this function is a primary responsibility of the commissioner of children and family services to ensure. Ensuring the safety of the communities into which the youth are placed is paramount, requiring that a youth be placed in appropriate locations to avoid preventable tragedy. The legislature finds that residents of programs and agencies licensed, certified and registered by the office of children and family services are committing serious crimes within such programs, and that these crimes are not being reported to the proper authorities. The provisions of this act provide a critical framework to improve and maintain safety within such licensed, certified and registered programs, non-profit community based programs and communities throughout the state allowing youths under the office of children and family services' jurisdiction the ability to be rehabilitated and receive skills necessary to inhibit recidivism.

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

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

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

12-a. To establish and provide for the implementation of a course of training to be completed by all staff members and employees responsible for the care, custody, treatment, housing, education, rehabilitation or guidance of children in facilities in which children are placed or committed by the office of children and family services. The commissioner of such office shall establish programs for preemployment training and in service staff development and training. All such training shall include instruction in child abuse and maltreatment prevention and identification; staff abuse prevention and identification; safety and security procedures; the principles of child development; the use of physical intervention; techniques of group and individual child management; gang awareness; absent without leave procedures; conflict resolution; and the laws, rules and regulations governing the protection of children from abuse and maltreatment. Such commissioner shall ensure that all training conducted pursuant to this subdivision is evidence based, and evaluated and updated on an annual basis. The failure to provide the training required by this subdivision shall constitute neglect of duty for which the governor may remove the commissioner of children and family services from office.

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

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

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

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

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

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

§ 501-i. Custody, control and discharge of detained youth. 1. Placement. The office of children and family services shall place each youth committed to its custody upon the basis of such youth's risk assessment value as set forth in subdivision three of this section. Provided, that no youth convicted of or adjudicated as having committed a designated

felony, or found to have committed two or more level C rule violations while in custody, or found to have committed four or more level B rule violations within the previous three months shall be authorized to be placed in any program or facility that is not designated as a secure facility. Furthermore, no youth having a risk level of III shall be placed in any program licensed, registered or certified by the office of children and family services which is not a secure facility.

2. Movement to lower level of custody. Prior to the movement of any youth to a lower level of custody, a risk assessment shall be conducted for such youth. Such assessment shall be completed by the staff charged with the daily care and custody of the youth. Upon completion of a risk assessment of a youth, the facility or program which will receive such youth shall verify whether it meets the staffing requirements of subdivision six of this section.

3. Risk assessment. The commissioner of children and family services, or his or her designee, shall establish a risk assessment value for each youth committed to the custody of the office of children and family services. The risk assessment value of each youth shall be derived by adding the youth's factors for facility rule violations to his or her prior offense history, and subtracting therefrom his or her mitigating factors.

(a) Facility rule factors shall be determined by:

(i) the number of level B rule violations multiplied by two; and

(ii) the number of level C rule violations multiplied by three.

(b) Prior offense history factor shall be determined by:

(i) the number of open or prior juvenile delinquency determinations within the previous three years: one point per offense, but not to exceed three points;

(ii) the number of offenses pending prosecution by the county attorney: one point per offense, but not to exceed three points;

(iii) a pending family court felony offense: four points;

(iv) a pending family court misdemeanor offense: one point per offense, but not to exceed three points;

(v) a past felony adjudication within the previous three years: five points;

(vi) two or more misdemeanor adjudications within the previous three years: three points; and

(vii) one misdemeanor adjudication within the previous three years: one point.

(c) Mitigating factor shall be determined by:

(i) the lack of prior arrests or adjudications: one point;

(ii) not being subject to a person in need of supervision proceeding within the previous three years: one point;

(iii) currently actively cooperating in counseling, prevention, services or a program: one point.

4. Definitions. As used in this article:

(a) "Designated felony" shall mean and include any of the following felonies defined in the penal law: murder in the first degree, murder in the second degree, manslaughter in the first degree, manslaughter in the second degree, kidnapping in the first degree, arson in the first degree, assault in the first degree, gang assault in the first degree, arson in the second degree, robbery in the first degree, gang assault in the second degree, aggravated sexual abuse in the first degree, rape in the first degree, criminal sexual act in the first degree, burglary in the first degree.

(b) "Designated risk level" shall mean an assessment of each youth committed to the custody of the office of children and family services, in which, in light of all available records, the number and types of offenses and rule violations committed by such youth while in the care and custody of the office of children and family services and in any program licensed, registered or certified by such office, and previous criminal and juvenile delinquency determinations, such youth is determined to present a low, moderate or high risk of committing another crime defined in the penal law or which would constitute such a crime if committed by an adult, or poses a threat to the safety of himself or herself or others.

(i) "Risk level I" means a youth has a low risk of repeating or committing additional offenses or rule violations, or poses no danger to public safety. A youth determined to have a risk level of I shall have a risk factor of three points or less.

(ii) "Risk level II" means a youth has a moderate risk of repeating or committing additional offenses or rule violations, or poses a moderate threat to public safety. A youth determined to have a risk level of II shall have a risk factor of between four and eight points.

(iii) "Risk level III" means a youth has a high risk of repeating or committing additional offenses or rule violations, or poses a serious threat to public safety. A youth determined to be a risk level of III shall have a risk factor of nine or more points.

(c) "Egregious act" shall mean an act which is conspicuously offensive, intentional or blatant.

(d) "Persistent pattern" shall mean a course of conduct that is intentionally repetitive.

5. Rule violations. (a) A youth is guilty of a level B violation when he or she:

(i) Attempts to, conspires to or acts as an accessory to an escape attempt from any facility, program or custody;

(ii) Withholds information about an attempted escape or absence without leave;

(iii) Engages in any violent conduct involving the threat of violence;

(iv) Practices or instructs others in martial arts, sparring or self defense techniques;

(v) Engages in gang-related hand, verbal or written communication;

(vi) Intentionally exposes the private parts of their bodies;

(vii) Makes any threat verbally, in writing or by gesture to any person;

(viii) Possesses unauthorized security-related equipment such as keys, vehicular keys, communication devices or restraint equipment;

(ix) Makes, uses, possesses, sells or exchanges, or is under the influence of any alcoholic beverage or intoxicant;

(x) Makes, uses, possesses, sells or exchanges, or is under the influence of any narcotic, narcotic paraphernalia or controlled substance;

(xi) Possesses outdated or unauthorized types or quantities of medication;

(xii) Sells outdated or unauthorized types or quantities of medication;

(xiii) Attempts to smuggle or attempts to solicit others to smuggle any item into or out of a facility or program or from one facility or program area to another;

(xiv) Engages in any verbal behavior which interferes with the secure and orderly operation of the facility;

(xv) Engages in any verbal behavior which may result in injury to staff or residents;

(xvi) Engages in any physical, persistent or egregious behavior which interferes with the secure and orderly operation of the facility;

(xvii) Engages in any physical, persistent or egregious behavior which may result in injury to staff or residents;

(xviii) Spits, urinates or defecates on the floor or any other area;

(xix) Throws urine or feces or sanitary items;

(xx) Fails to comply or otherwise disrupts facility and program count procedures;

(xxi) Mutilates or defaces his or her body, or engages in the mutilation or defacement of another person's body; or

(xxii) Engages in a persistent pattern of infractions and fails to respond to sanctions previously imposed by an individual charged with such youth's care or custody.

(b) A youth is guilty of a level C violation when he or she:

(i) Commits or attempts to commit any offense defined in the penal law;

(ii) Starts or attempts to start a fire, without authorization;

(iii) Causes or attempts to cause an explosion;

(iv) Possesses an explosive device or materials which can be used to make an explosive device;

(v) Inflicts or attempts to inflict bodily harm upon another resident, a staff member or any other person;

(vi) Engages in fighting;

(vii) Conspires or takes any action which is intended to or results in the takeover of any area of a facility or program, or, acting in a group, engages in any violent conduct or conduct involving the threat of violence;

(viii) Engages with others in any violent conduct or threat of violence;

(ix) Leads, organizes or urges other residents to participate in actions detrimental to the order of a facility or program;

(x) Engages in or encourages others to engage in unauthorized organizational activities or meetings;

(xi) Displays, wears, possesses, distributes or uses unauthorized organizational insignia or materials;

(xii) Makes, possesses, sells, exchanges or uses any gun, firearm or ammunition, knife, razor, sharpened instrument, tool or other item classified as a weapon by use or appearance;

(xiii) Conspires to, is an accessory to or commits escape from any program or custody, or withholds information about an escape or absence without leave;

(xiv) Intentionally fails or attempts to fail to return at or before the time prescribed for his or her return;

(xv) Engages in, encourages, solicits or attempts to force others to engage in sexual acts or gestures;

(xvi) Tampers with or threatens witnesses or informants in any investigation; or

(xvii) Possesses tools, culinary instruments or other items that may be classified as weapons by use or appearance without authorization.

6. Staffing. Programs operated, licensed, certified or registered by the office of children and family services shall comply with the following staffing requirements:

(a) Those programs accepting youths with risk level I assessments shall have staffing sufficient to ensure the safety of the employees and residents of the program.

(b) Those programs accepting youths with risk level II assessments shall have staffing sufficient to ensure that no employee shall be required to supervise no more than one such youth, unless the employee is accompanied by not less than one other employee of the program or another appropriate person.

(c) Those programs accepting youths with risk level III assessments shall be secure or limited secure facilities.

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

4. The [~~division~~] office of children and family services shall determine, subject to the provisions of section five hundred one-i of this article, the particular [~~division~~] office facility or program in which a child placed with [~~the division~~] such office shall be cared for, based upon an evaluation of such child. The [~~division~~] office of children and family services shall, subject to the provisions of section five hundred one-i of this article and after a complete review of the records and files of a child, also have authority to discharge or conditionally release children placed with it and to transfer such children from a limited secure or non-secure facility to any other limited secure or non-secure facility, when the interest of such children requires such action; provided that a child transferred to a non-secure facility from a limited secure facility may be returned to a limited secure facility upon a determination by the [~~division~~] office that, for any reason, care and treatment at the non-secure facility is no longer suitable. Provided, however, that no such discharge, release or transfer shall be authorized if the child's 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 B rule violations within three months prior to a proposed placement in a less secure facility, or (c) notation of any conduct or act committed by such child which would constitute a crime defined in the penal law if committed by an adult.

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

6. The office of children and family services not less than ten days before the movement of any youth, committed to the custody or supervision of such office, to any facility or program operated, licensed, registered, certified or authorized by the office, shall provide notice of the movement of such youth to the division of state police and the local law enforcement agency having jurisdiction over the facility or program to which the youth is to be moved. Such notice shall include, but not be limited to, reports of the youth's prior assaults, acts of violence, attempted suicides, escapes and attempted escapes while in the care and custody of the office, and criminal charges.

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

§ 510. Reports of youth criminal activity; required. 1. (a) Every officer and employee of a facility or program, that is subject to the provisions of this title, shall report or cause a report to be made to a 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.

§ 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~~] an office 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~~] office 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~~] office; 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 B rule violations within three months prior to a proposed placement in a less secure facility, or (c) notation of any

conduct or act committed by such child which would constitute a designated felony crime defined in the penal law if committed by an adult.

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

22. Establish rules and regulations requiring, upon request of the operator of a facility or program licensed, registered or certified by the office of children and family services, when a youth has absented himself or herself from such facility or program without authorization, that a police officer having jurisdiction escort an employee of such facility or program to the absent youth's place of residence to investigate where such youth has fled. Every such police officer shall assist the employee in taking the youth into custody and returning the youth to the facility or program to which the youth is assigned.

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

§ 166. Privacy of records. (a) The records of any proceeding in the family court shall not be open to indiscriminate public inspection. However, the court in its discretion in any case may permit the inspection of any papers or records. Any duly authorized agency, association, society or institution to which a child is committed may cause an inspection of the record of investigation to be had and may in the discretion of the court obtain a copy of the whole or part of such record.

(b) Notwithstanding the provisions of subdivision (a) of this section, the records of every juvenile delinquency proceeding in the family court of a person, who is placed with or committed to the custody of the office of children and family services, shall be open to and be provided:

(1) to the staff members and employees of the facility, whether operated by such office or not, in which such person is placed or committed as a juvenile delinquent, juvenile offender or youthful offender 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 person;

(2) in the event such person engages in conduct or commits an act which would constitute a crime defined in the penal law if the person was an adult or commits a crime defined in the penal law, to the court, the presentment agency or district attorney, and such person's attorney upon the filing of charges against the person relating to such crime; and

(3) to any foster parents having custody of such person after release from the custody of the office of children and family services.

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

5. Notwithstanding the provisions of subdivision two of this section, all official records and papers of a youthful offender, who is committed to the custody of the office of children and family services shall be open to and be provided to:

(a) the staff members and employees of the facility, whether operated by such office or not, in which the offender is committed 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 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 (x) to read as follows:

(x) 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, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

§ 16. This act shall take effect on the first of January next succeeding the date on which it shall have become a law; provided that, effective immediately, any rules and regulations necessary to implement the provisions of this act on its effective date are authorized to be promulgated, repealed and/or amended on or before such date.