

STATE OF NEW YORK

7445

2023-2024 Regular Sessions

IN SENATE

May 26, 2023

Introduced by Sen. BAILEY -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, the executive law and the county law, in relation to providing temporary holding facilities for adolescent offenders

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 5-a of section 120.90 of the criminal procedure
2 law, as added by section 16 of part WWW of chapter 59 of the laws of
3 2017, is amended to read as follows:

4 5-a. Whenever a police officer is required, pursuant to this section,
5 to bring an arrested defendant before a youth part of a superior court
6 in which a warrant of arrest is returnable, and if such court is not in
7 session, such officer [~~must~~] shall bring such defendant before the most
8 accessible magistrate designated by the appellate division of the
9 supreme court in the applicable department to act as a youth part. If no
10 such magistrate is available and an arrested juvenile or adolescent
11 offender cannot be released prior to arraignment, such officer shall
12 bring the arrested juvenile or adolescent offender, as applicable, to a
13 secure juvenile detention facility or to a specialized secure detention
14 facility for older youth certified in accordance with section 510.15 of
15 this chapter or, if such a facility is not reasonably available, to a
16 temporary pre-appearance secure holding facility. The arrested juvenile
17 or adolescent offender may be held in such detention or holding facility
18 pending the next session of the youth part or the availability of a
19 magistrate designated hereunder, whichever is sooner, but in no event to
20 exceed eighteen hours.

21 § 2. Subdivision 8 of section 140.20 of the criminal procedure law, as
22 added by section 19 of part WWW of chapter 59 of the laws of 2017, is
23 amended to read as follows:

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

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1 8. If the arrest is for a juvenile offender or adolescent offender
2 other than an arrest for a violation or a traffic infraction, such
3 offender shall be brought before the youth part of the superior court.
4 If the youth part is not in session, such offender shall be brought
5 before the most accessible magistrate designated by the appellate divi-
6 sion of the supreme court in the applicable department to act as a youth
7 part. If no such magistrate is available and an arrested juvenile or
8 adolescent offender cannot be released prior to arraignment, such offi-
9 cer shall bring the arrested juvenile or adolescent offender, as appli-
10 cable, to a secure juvenile detention facility or to a specialized
11 secure detention facility for older youth certified in accordance with
12 section 510.15 of this chapter or, if such a facility is not reasonably
13 available, to a temporary pre-appearance secure holding facility. The
14 offender may be held in such detention or holding facility pending the
15 next session of the youth part or the availability of a magistrate
16 designated hereunder, whichever is sooner, but in no event to exceed
17 eighteen hours.

18 § 3. Subdivision 3-a of section 140.27 of the criminal procedure law,
19 as added by section 22 of part WWW of chapter 59 of the laws of 2017, is
20 amended to read as follows:

21 3-a. If the arrest is for a juvenile offender or adolescent offender
22 other than an arrest for violations or traffic infractions, such offen-
23 der shall be brought before the youth part of the superior court. If
24 the youth part is not in session, such offender shall be brought before
25 the most accessible magistrate designated by the appellate division of
26 the supreme court in the applicable department to act as a youth part.
27 If no such magistrate is available and the arrested juvenile or adoles-
28 cent offender cannot be released prior to arraignment, such officer
29 shall bring the arrested juvenile or adolescent offender, as applicable,
30 to a secure juvenile detention facility or to a specialized secure
31 detention facility for older youth certified in accordance with section
32 510.15 of this chapter or, if such a facility is not reasonably avail-
33 able, to a temporary pre-appearance secure holding facility. The offen-
34 der may be held in such detention or holding facility pending the next
35 session of the youth part or the availability of a magistrate designated
36 hereunder, whichever is sooner, but in no event to exceed eighteen
37 hours.

38 § 4. Paragraph (b) of subdivision 2 of section 410.40 of the criminal
39 procedure law, as added by section 32 of part WWW of chapter 59 of the
40 laws of 2017, is amended to read as follows:

41 (b) If the court in which the warrant is returnable is a superior
42 court, and such court is not available, and the warrant is addressed to
43 a police officer or appropriate probation officer certified as a peace
44 officer, such executing officer shall, where a defendant is sixteen
45 years of age or younger who allegedly commits an offense or a violation
46 of his or her probation or conditional discharge imposed for an offense
47 on or after October first, two thousand eighteen, or where a defendant
48 is seventeen years of age or younger who allegedly commits an offense or
49 a violation of his or her probation or conditional discharge imposed for
50 an offense on or after October first, two thousand nineteen, bring the
51 defendant without unnecessary delay before the youth part, provided,
52 however that if the youth part is not in session, the defendant shall be
53 brought before the most accessible magistrate designated by the appel-
54 late division. If no such magistrate is available and the juvenile or
55 adolescent offender cannot be released prior to arraignment, such offi-
56 cer shall bring the juvenile or adolescent offender, as applicable, to a

secure juvenile detention facility or to a specialized secure detention facility for older youth certified in accordance with section 510.15 of this chapter or, if such a facility is not reasonably available, to a temporary pre-appearance secure holding facility. The offender may be held in such detention or holding facility pending the next session of the youth part or the availability of a magistrate designated hereunder, whichever is sooner, but in no event to exceed eighteen hours.

§ 5. Subdivision 3 of section 502 of the executive law, as amended by section 19 of part K of chapter 56 of the laws of 2019, is amended to read as follows:

3. "Detention" means the temporary care and maintenance of youth held away from their homes pursuant to article three of the family court act, or held pending issuance of a securing order if the youth is charged as a juvenile offender or adolescent offender or held pending a hearing for alleged violation of the conditions of release from an office of children and family services facility or authorized agency, or held pending a hearing for alleged violation of the condition of parole as a juvenile offender, youthful offender or adolescent offender or held pending return to a jurisdiction other than the one in which the youth is held, or held pursuant to a securing order of a criminal court if the youth named therein as principal is charged as a juvenile offender, youthful offender or adolescent offender or held pending a hearing on an extension of placement or held pending transfer to a facility upon commitment or placement by a court. Only alleged or convicted juvenile offenders, youthful offenders or adolescent offenders who have not attained their eighteenth or, commencing October first, two thousand eighteen, their twenty-first birthday shall be subject to detention in a detention facility. Commencing October first, two thousand eighteen, a youth who on or after such date ~~[committed]~~ is charged with committing an offense when the youth was sixteen years of age; or commencing October first, two thousand nineteen, a youth who ~~[committed]~~ is charged with committing an offense on or after such date when the youth was seventeen years of age held pursuant to a securing order of a criminal court if the youth is charged as an adolescent offender or held pending a hearing for alleged violation of the condition of parole as an adolescent offender, ~~[must]~~ shall be held in a specialized secure juvenile detention facility for older youth certified by the state office of children and family services in conjunction with the state commission of correction, or pending issuance of a securing order held for no longer than eighteen hours in a specialized secure detention facility for older youth or a temporary pre-appearance secure holding facility for adolescent youth.

§ 6. The executive law is amended by adding a new section 503-b to read as follows:

§ 503-b. Temporary pre-appearance secure holding facilities for juvenile and adolescent offenders. 1. The office of children and family services shall establish regulations for the operation of temporary pre-appearance secure holding facilities for juvenile and adolescent offenders pursuant to this article and subdivision six of section two hundred eighteen-a of the county law. Notwithstanding any other provision of law, the office, in consultation with the state commission of correction, shall jointly regulate, certify, visit, inspect and supervise temporary pre-appearance secure holding facilities for adolescent offenders. The office shall maintain a list on-line of all facilities certified for the temporary pre-appearance holding of adolescent offenders and shall file a copy of that list periodically with the clerk

1 of the youth part established in each county in accordance with article
2 seven hundred twenty-two of the criminal procedure law.

3 2. The holding facilities shall temporarily accommodate juvenile and
4 adolescent offenders, as defined, respectively, in subdivisions forty-
5 two and forty-four of section 1.20 of the criminal procedure law, who
6 are awaiting an appearance before a youth part of a superior court or an
7 available designated magistrate, whichever is earlier, and who may
8 neither be released nor reasonably held temporarily in a secure juvenile
9 detention facility or a specialized secure detention facility for older
10 youth, as applicable, pending such appearance. No juvenile or adolescent
11 offender may be held in a holding facility under this section for more
12 than eighteen hours.

13 3. No juvenile or adolescent offenders may be held in a holding facil-
14 ity established pursuant to this section unless the facility has been
15 certified by the office of children and family services. The regulations
16 of such office shall set forth procedures and requirements for such
17 certification, including requirements for a maximum capacity that may
18 not be exceeded and for background checks of all employees. The regu-
19 lations shall also delineate procedures for the renewal of the certif-
20 ication and, upon good cause, for the suspension and revocation of the
21 certification, including a right to a pre-revocation hearing.

22 4. The facilities shall be appropriate for the care of juvenile and
23 adolescent offenders and shall not be jail-like in appearance. If such
24 facilities are co-located with any prison, jail, lockup or other place
25 used for adults convicted of or under arrest for a crime, there shall be
26 sight and sound separation between the juvenile and adolescent offenders
27 held in such facilities and any adults in such prison, jail, lockup or
28 other place. The holding facilities shall be supervised at all times by
29 staff trained in the care of juvenile and adolescent offenders and shall
30 contain clean, well-maintained facilities.

31 § 7. Section 218-a of the county law, as amended by chapter 880 of the
32 laws of 1976, the opening paragraph of subdivision A as amended by chap-
33 ter 465 of the laws of 1992, paragraphs 1, 2, 3, and 4 of subdivision A
34 as amended by chapter 555 of the laws of 1978, paragraph 6 of subdivi-
35 sion A as added by section 82-b of part WWW of chapter 59 of the laws of
36 2017, subdivision B as amended by chapter 419 of the laws of 1987 and
37 subdivision C as added by section 12 of part E of chapter 57 of the laws
38 of 2005, is amended to read as follows:

39 § 218-a. County detention facilities for juvenile delinquents, juve-
40 nile and adolescent offenders and persons in need of supervision. A.
41 ~~[To]~~ The office of children and family services shall promulgate regu-
42 lations to assure that suitable and conveniently accessible accommo-
43 dations and proper and adequate detention in secure, specialized secure
44 and non-secure detention facilities, as defined in section five hundred
45 two of the executive law and the regulations of ~~[the division for youth]~~
46 such office, will be available when required for the temporary care,
47 maintenance and security of alleged and convicted juvenile offenders,
48 alleged and adjudicated juvenile delinquents, alleged and convicted
49 adolescent offenders and alleged and adjudicated persons in need of
50 supervision. Such regulations shall not require any county to provide
51 temporary care in a secure detention facility for residents of any other
52 county except upon a space available basis. The county executive, if
53 there be one, otherwise the board of supervisors shall designate the
54 agency of county government responsible for the administration of the
55 county juvenile detention program and shall so advise the New York state

1 ~~[division for youth]~~ office of children and family services, and may
2 make provisions therefor as follows:

3 1. Provide for the continued operation of the county's established
4 detention facility, so long as it complies with regulations of the
5 ~~[division for youth]~~ office of children and family services, and is
6 certified by ~~[that division]~~ such office.

7 2. Authorize a contract between its county and one or more other coun-
8 ties, which is or are operating a conveniently accessible detention
9 facility certified by the ~~[division for youth]~~ office of children and
10 family services and in compliance with regulations of ~~[the division for~~
11 ~~youth]~~ such office, providing for the reception, temporary accommodation
12 and care in such facility of alleged or adjudicated juvenile delinquents
13 and persons in need of supervision held for or at the direction of its
14 family court, for and in consideration of the payments to be made there-
15 for, on a per capita basis, pursuant to the terms of such contract.

16 3. Authorize a contract between its county and one or more other coun-
17 ties providing for the joint operation and maintenance by them of an
18 already established county detention facility certified by the state
19 ~~[division for youth]~~ office of children and family services and operated
20 and maintained in compliance with the regulations of ~~[the division for~~
21 ~~youth]~~ such office, which is conveniently accessible to the counties
22 concerned. Such authorization and contract may include provisions for
23 remodeling or enlarging the building of such facility.

24 4. Authorize a contract between its county and one or more other coun-
25 ties providing for the joint establishment, operation and maintenance by
26 such counties of a new joint county detention facility which shall be
27 located on a site conveniently accessible to the counties concerned and
28 which shall be certified by the state ~~[division for youth]~~ office of
29 children and family services and which shall be established, operated
30 and maintained in compliance with the regulations of ~~[the division for~~
31 ~~youth]~~ such office.

32 5. The resolution providing for joint action under paragraph three or
33 four ~~[above]~~ of this subdivision shall be adopted by the board of super-
34 visors of each of the several counties affected, and a committee
35 composed of at least one member of each of such boards shall be created
36 to acquire the necessary real property in the name of the counties
37 affected, and as the joint agent of such counties such committee shall
38 have charge of the construction, equipment, maintenance and operation of
39 such joint county detention facility and, with the advice of an advisory
40 committee consisting of the judge of the family court and the commis-
41 sioner of social services of each of said counties, shall supervise and
42 control the maintenance and operation of such joint county detention
43 facility. The said resolution may specify the matters as to which the
44 action of such committee shall require the joint approval of the boards
45 of supervisors of all the counties affected and shall prescribe the
46 proportions to be borne by each of the several counties affected of the
47 costs of acquisition of the site and of construction of a new joint
48 county detention facility and the proportions to be borne by each of the
49 several counties affected of the costs of operation of such joint county
50 detention facility, whether established by new joint acquisition and
51 construction or by utilization of an existing county detention facility.
52 The moneys to pay the share to be borne by each county affected shall be
53 provided by appropriation in such amounts and at such times as may be
54 agreed upon.

55 6. Notwithstanding any other provision of law, commencing October
56 first, two thousand eighteen, a county ~~[must]~~ shall provide for adequate

1 detention of alleged or convicted adolescent offenders in a specialized
2 secure detention facility for older youth who are alleged or convicted
3 of committing an offense when they were sixteen years of age and
4 commencing October first, two thousand nineteen, a county ~~[must]~~ shall
5 provide for adequate detention of alleged or convicted adolescent offen-
6 ders in a specialized secure detention facility for older youth who are
7 alleged or convicted of committing an offense when they were sixteen or
8 seventeen years of age. Such facility shall be certified and regulated
9 by the office of children and family services in conjunction with the
10 state commission of correction. Such facility shall: (i) have enhanced
11 security features and specially trained staff; and (ii) be jointly
12 administered by the agency of county government designated in accordance
13 with subdivision A of this section and the applicable county sheriff,
14 which both shall have the power to perform all acts necessary to carry
15 out their duties. The county sheriff shall be subject to the same laws
16 that apply to the designated county agency regarding the protection and
17 confidentiality of the information about the youth in such facility and
18 shall prevent access thereto by, or the distribution thereof to, persons
19 not authorized by law. Where a county is not located in proximity to a
20 secure juvenile detention facility for juvenile offenders or a special-
21 ized secure detention facility for older youth adolescent offenders, it
22 may establish, on an as-needed basis, one or more temporary pre-appear-
23 ance secure holding facilities for juvenile and adolescent offenders in
24 accordance with section five hundred three-b of the executive law. Such
25 holding facilities shall be certified and regulated by the office of
26 children and family services in conjunction with the state commission of
27 correction and shall be available to hold for no more than eighteen
28 hours any juvenile or adolescent offender who cannot be released or held
29 in a secure juvenile detention facility or specialized secure detention
30 facility for older youth, as applicable, pending an appearance before a
31 youth part or accessible magistrate, whichever is sooner.

32 B. Notwithstanding any other provision of law, each board of supervi-
33 sors shall provide or assure the availability of conveniently accessible
34 and adequate non-secure detention facilities, certified by the state
35 ~~[division for youth]~~ office of children and family services, as
36 resources for the family court in the county pursuant to articles seven
37 and three of the family court act, to be operated in compliance with the
38 regulations of ~~[the division for youth]~~ such office for the temporary
39 care and maintenance of alleged and adjudicated juvenile delinquents and
40 persons in need of supervision held for or at the direction of a family
41 court.

42 C. Each county shall offer diversion services to children who are at
43 risk of being the subject of a petition under ~~[article]~~ articles three
44 and seven of the family court act. Such services shall be designed to
45 provide an immediate response to families in crisis and to identify and
46 utilize appropriate alternatives to juvenile detention.

47 § 8. This act shall take effect on the ninetieth day after it shall
48 have become a law.