STATE OF NEW YORK

429

2023-2024 Regular Sessions

IN ASSEMBLY

January 9, 2023

Introduced by M. of A. BURGOS -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, the criminal procedure law, the family court act, and the executive law, in relation to prohibiting the handcuffing or forcible restraint of certain juveniles in certain circumstances; and limiting warrantless arrests of juveniles except where the arrest is necessary for public safety

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

Section 1. Section 35.30 of the penal law is amended by adding a new subdivision 1-a to read as follows:

1-a. (a) (i) Notwithstanding any contrary provision of this section or any other contrary provision of law, a police officer or a peace officer, in the course of effecting or attempting to effect an arrest, or of preventing or attempting to prevent the escape from custody, of a child as defined in subparagraph (i) of paragraph (b) of this subdivision whom such officer reasonably believes to have committed an offense, may use physical force only when such officer reasonably believes such child poses an imminent risk of danger to such child, the officer, or another person, nor shall any such officer handcuff or otherwise forcibly restrain such child unless such officer reasonably believes such child poses an imminent risk of danger to such child, the officer, or a third person.

(ii) Notwithstanding any contrary provision of this section or any other contrary provision of law, a police officer or a peace officer, in the course of effecting or attempting to effect an arrest, or of preventing or attempting to prevent the escape from custody, of an adolescent as defined in subparagraph (ii) of paragraph (b) of this subdivision, may handcuff or otherwise forcibly restrain such adolescent when, in such officer's discretion, such physical force or forcible restraint is necessary to effect the arrest, prevent the escape or to

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

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overcome resistance from such adolescent based on the nature and severity of the alleged offense and the circumstances of the interaction with such adolescent.

(b) As used in this section the following terms shall have the following meanings:

(i) "Child" shall mean a person less than thirteen years of age.

(ii) "Adolescent" shall mean a person over thirteen and less than eighteen years of age.

(iii) "Forcibly restrain" or "forcible restraint" includes but is not limited to the following actions:

(A) the use of any type of handcuffs, including disposable cinch cuffs, thumb cuffs, zip ties, chains, shackles, irons, or any other similar device or equipment used to restrict a person's movement; or

(B) the use or threatened use of physical force for the purposes of restricting a person's movement, including the use or threatened use of a firearm, or a taser, stun gun, or any similar "non-lethal" weapons; or

(C) the use or application of any combination of the methods described in clauses (A) and (B) of this subparagraph.

§ 2. Section 140.10 of the criminal procedure law is amended by adding a new subdivision 3-b to read as follows:

3-b. (a) Notwithstanding any contrary provision of this section or any other contrary provision of this article, a police officer may arrest a person under the age of eighteen years pursuant to subdivisions one, two, and three of this section only when such warrantless arrest is reasonably necessary to prevent an immediate threat to public safety.

(b) Except as provided in paragraph (a) of this subdivision, when a police officer has reasonable cause to believe that such person under the age eighteen years has committed:

(i) an offense in such officer's presence, or

(ii) a crime whether in such officer's presence or otherwise, such police officer shall:

(A) issue or cause the issuance of an appearance ticket to such person pursuant to article one hundred fifty of this part or article three of the family court act; or

(B) apply for warrant of arrest pursuant to section 120.20 of this part or article three of the family court act.

(c) Nothing in this subdivision shall be construed to apply to an arrest made pursuant to subdivision four of this section.

§ 3. Subdivision 2 of section 305.2 of the family court act, as amended by section 62 of part WWW of chapter 59 of the laws of 2017, is amended to read as follows:

2. An officer may take a child who may be subject to the provisions of this article for committing an act that would be a crime if committed by an adult into custody without a warrant in cases in which the officer may arrest a person [~~for a crime under article one hundred forty~~] under the age of eighteen years without a warrant pursuant to subdivision three-b of section 140.10 of the criminal procedure law.

§ 4. The executive law is amended by adding a new section 76 to read as follows:

§ 76. Youth services hotline for police officers. 1. The attorney general shall establish and administer a hotline for police officers, as defined in subdivision thirty-four of section 1.20 of the criminal procedure law, to consult with youth social services professional or legal personnel about field and school arrests, custody orders, warrants, and other procedures governing police interactions with persons under the age of eighteen years.

2. The attorney general shall recruit youth social services professionals and attorneys to participate in the program; provided such social services professionals and attorneys shall not be deemed to be representing any police officers that they advise through the program.

3. Such hotline shall be accessible via a toll-free phone number that operates twenty-four hours per day and seven days per week.

§ 5. This act shall take effect immediately.