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:

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

5-a. Whenever a police officer is required, pursuant to this section, to bring an arrested defendant before a youth part of a superior court in which a warrant of arrest is returnable, and if such court is not in session, such officer [~~must~~] **shall** bring such defendant before the most accessible magistrate designated by the appellate division of the supreme court in the applicable department to act as a youth part. **If no such magistrate is available and an arrested juvenile or adolescent offender cannot be released prior to arraignment, such officer shall bring the arrested 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 arrested juvenile or adolescent 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.**

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

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

LBD08976-01-3

8. If the arrest is for a juvenile offender or adolescent offender other than an arrest for a violation or a traffic infraction, such offender shall be brought before the youth part of the superior court. If the youth part is not in session, such offender shall be brought before the most accessible magistrate designated by the appellate division of the supreme court in the applicable department to act as a youth part. **If no such magistrate is available and an arrested juvenile or adolescent offender cannot be released prior to arraignment, such officer shall bring the arrested 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.**

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

3-a. If the arrest is for a juvenile offender or adolescent offender other than an arrest for violations or traffic infractions, such offender shall be brought before the youth part of the superior court. If the youth part is not in session, such offender shall be brought before the most accessible magistrate designated by the appellate division of the supreme court in the applicable department to act as a youth part. **If no such magistrate is available and the arrested juvenile or adolescent offender cannot be released prior to arraignment, such officer shall bring the arrested 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.**

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

(b) If the court in which the warrant is returnable is a superior court, and such court is not available, and the warrant is addressed to a police officer or appropriate probation officer certified as a peace officer, such executing officer shall, where a defendant is sixteen years of age or younger who allegedly commits an offense or a violation of his or her probation or conditional discharge imposed for an offense on or after October first, two thousand eighteen, or where a defendant is seventeen years of age or younger who allegedly commits an offense or a violation of his or her probation or conditional discharge imposed for an offense on or after October first, two thousand nineteen, bring the defendant without unnecessary delay before the youth part, provided, however that if the youth part is not in session, the defendant shall be brought before the most accessible magistrate designated by the appellate division. **If no such magistrate is available and the juvenile or adolescent offender cannot be released prior to arraignment, such officer 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

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

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

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

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

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

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

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

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

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

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

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

5. The resolution providing for joint action under paragraph three or four [~~above~~] of this subdivision shall be adopted by the board of supervisors of each of the several counties affected, and a committee composed of at least one member of each of such boards shall be created to acquire the necessary real property in the name of the counties affected, and as the joint agent of such counties such committee shall have charge of the construction, equipment, maintenance and operation of such joint county detention facility and, with the advice of an advisory committee consisting of the judge of the family court and the commissioner of social services of each of said counties, shall supervise and control the maintenance and operation of such joint county detention facility. The said resolution may specify the matters as to which the action of such committee shall require the joint approval of the boards of supervisors of all the counties affected and shall prescribe the proportions to be borne by each of the several counties affected of the costs of acquisition of the site and of construction of a new joint county detention facility and the proportions to be borne by each of the several counties affected of the costs of operation of such joint county detention facility, whether established by new joint acquisition and construction or by utilization of an existing county detention facility. The moneys to pay the share to be borne by each county affected shall be provided by appropriation in such amounts and at such times as may be agreed upon.

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

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

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

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

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