

STATE OF NEW YORK

7403

IN SENATE

April 4, 2008

Introduced by Sen. KRUGER -- (at request of the Office of Children and Family Services) -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services, Children and Families

AN ACT to amend the executive law, in relation to tolling the placement period for youth on conditional release or transferred to a residential program within the department of mental hygiene who are absent without leave

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

1 Section 1. Subdivision 7 of section 510-b of the executive law, as
2 amended by chapter 309 of the laws of 1996 is amended, subdivision 8 of
3 such section is renumbered subdivision 9 and a new subdivision 8 is
4 added to read as follows:

5 7. When a child [~~who is~~] placed with the [~~division~~] office of children
6 and family services pursuant to article three of the family court act or
7 committed pursuant to the penal law, is absent from [~~a division~~] an
8 office of children and family services facility [~~or~~], an authorized
9 agency or a conditional release program without the consent of the
10 director of such facility or authorized agency or supervisor of such
11 conditional release program, the absence shall interrupt the calculation
12 of the time of such placement or commitment and such interruption shall
13 continue until the return of the child to the facility [~~or~~], authorized
14 agency or conditional release program in which the child was placed or
15 committed. Any time spent by such child in custody from the date of
16 absence to the date the placement pursuant to article three of the fami-
17 ly court act or commitment pursuant to the penal law resumes shall be
18 credited against the time of such placement or commitment provided:

19 (a) That such custody was due to an arrest or surrender based upon the
20 absence; or

21 (b) That such custody arose from an arrest or surrender on another
22 charge which did not culminate in a conviction, adjudication or adjust-
23 ment.

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

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1 8. When a child placed with the office of children and family services
 2 is transferred to the custody of the office of mental health or the
 3 office of mental retardation and developmental disabilities pursuant to
 4 section five hundred nine of this article, section 353.4 of the family
 5 court act or the provisions of the mental hygiene law, and such child is
 6 absent without the consent of the director of the residential program to
 7 which such child is assigned within the office of mental health or the
 8 office of mental retardation and developmental disabilities, the absence
 9 shall interrupt the calculation of the time of such placement and such
 10 interruption shall continue until the child is returned to the assigned
 11 program within the office of mental health or the office of mental
 12 retardation and developmental disabilities or transferred back to the
 13 custody of the office of children and family services. Any time spent by
 14 such child in custody from the date of absence to the date of return
 15 shall be credited against the time of such placement provided:

16 (a) that such custody was due to an arrest or surrender based upon the
 17 absence; or

18 (b) that such custody arose from an arrest or surrender on another
 19 charge which did not culminate in a conviction, adjudication or adjust-
 20 ment.

21 § 2. This act shall take effect on the thirtieth day after it shall
 22 have become a law.

NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1

BILL NUMBER: S7403

SPONSOR: KRUGER

TITLE OF BILL:

An act to amend the executive law, in relation to tolling the placement period for youth on conditional release or transferred to a residential program within the department of mental hygiene who are absent without leave

PURPOSE:

This bill would toll the placement of youth placed with Office of Children and Family Services (OCFS) who are absent without permission from conditional release from an Office of Mental Retardation and Developmental Disabilities (OMRDD) or Office of Mental Health (OMH) placement.

SUMMARY OF PROVISIONS:

Section 1 of the bill would amend Executive Law § 51 O-b(7) to toll the placement period of youth placed with OCFS who are on conditional release status and are absent from that program without the permission of the program supervisor. Section 1 also would add a new Executive Law

§ 510-b(8) to apply similar tolling provisions to youth placed with OCFS who are transferred to programs operated by OMRDD and OMH and run away from those programs. The period of the placement is interrupted by the youth's absence without permission and continues to be tolled until the youth returns to OCFS, OMRDD, OMH or other lawful custody.

Section 2 of the bill would provide that the provisions take effect 30 days after enactment

EXISTING LAW:

Executive Law § 510-b provides that the placement period of a youth placed with OCFS is interrupted where the youth is absent without leave from an OCFS operated facility or authorized agency. The placement period ceases to run while the youth is absent and resumes when the youth returns to OCFS or other lawful custody.

Executive Law § 509 permits OCFS to apply to transfer a youth placed with OCFS who has a mental illness, mental retardation or developmental disability to an OMH or OMRDD residential program. The transfer does not extend the underlying placement with OCFS.

Family Court Act (FCA) § 3534 permits the court to issue an order temporarily transferring, to the custody of OMH or OMRDD as appropriate, a juvenile delinquent placed with OCFS who is determined to have a mental illness, mental retardation or developmental disability.

FCA § 353.3 provides for the placement of a youth adjudicated as a juvenile delinquent with OCFS for an initial period of up to 18 months if the youth has committed an act that would be a felony if he or she were an adult, or for an initial period of up to 12 months if the youth has committed an act that would be a misdemeanor if he or she were an adult.

LEGISLATIVE HISTORY: sk 1 None.

STATEMENT IN SUPPORT:

Youth are placed with OCFS by the courts so that the youth will receive treatment. Conditional release status, which is also known as "after-care," continues treatment when the youth returns to the community. Cooperation with conditional release programming is especially important because the youth's success or failure during aftercare is an indicator of whether he or she is ready to be finally discharged to the community. If the youth runs away or is absent without permission from a conditional release program, further services are usually needed. In some instances, the youth must be returned to a residential facility for a time before conditional release is attempted again. A youth who is absent from conditional release programming without permission is unable to benefit from that program. Therefore, the youth's placement should not continue running while the youth is absent.

Current statute allows OCFS to toll the period of placement of any youth placed with OCFS who runs away from an OCFS facility or authorized agency. This bill would also toll the period of placement of a youth placed with OCFS who is absent without permission from a conditional release

program. Without the proposed tolling provisions, an absent youth's placement may expire before the youth is returned to the program. In order to preserve its jurisdiction over such a youth, OCFS may file for an extension of placement although the youth still is absent. However, some judges have expressed their reluctance to act on the extension in the absence of the respondent.

A similar situation may occur where a youth placed with OCFS is temporarily transferred to an OMH or OMRDD residential program for treatment. Some of the OMH and OMRDD treatment settings are non-secure and/or community-based and youth sometimes run away. This bill therefore also authorizes the tolling of the placement period of an OCFS-placed youth who is temporarily transferred to an OMH or OMRDD residential program and runs away from that program. This change will ensure that the youth can benefit from continued treatment once he or she is found.

BUDGET IMPLICATIONS:

None.

EFFECTIVE DATE:

This legislation would take effect 30 days after enactment.
