

SPECIALIZED SECURE DETENTION (SSD) REGULATIONS 180-3

FREQUENTLY ASKED QUESTIONS

The passage of the Raise the Age (RTA) legislation in April 2017 requires creation of specialized secure detention facilities (SSD) for the pre-trial and post-sentencing detention of youth who are alleged or sentenced “adolescent offenders” (AOs). On December 20, 2017, the New York State Office of Children and Family Services (OCFS) published a Notice of Emergency Adoption and Proposed Rulemaking, creating (9 NYCRR Part 180-3) to govern SSDs. As part of the public comment process for the SSD regulations, OCFS received questions regarding interpretation. OCFS provides answers in this document that will be revisited and updated as necessary.

CERTIFICATION PROCESS

Q. When will the application and other forms be available?

A. The application will be available in spring, 2018.

Q. What will be the expected “turnaround time” for approval?

A. Upon receipt of all paperwork, the processing time will be completed as quickly as possible and is anticipated to be faster for additions or major modifications to currently existing facilities.

Q. How do you designate the agency responsible for administering in conjunction with the applicable county sheriff?

A. The local county determines which agency of county government is responsible for administering in conjunction with the sheriff (e.g., local probation or local department of social services). Generally, it will be the administrative agency that will submit the application.

Q. What are the certification procedures to be utilized if a county contracts with a public or nonprofit child caring agency to operate the SSD facility?

A. There is a single application and the administrative agency will indicate if the operating agency has the requisite corporate authority.

- Q.** Have OCFS and the State Commission of Correction (SCOC) determined the definition of “same grounds”?
- A.** The determination of what constitutes “same grounds” is not a static idea that can be placed in a definition. To allow maximum flexibility, this is an analysis that must be done on a case-by-case basis.
- Q.** Are there existing facilities in the state that already meet the OCFS regulations? If so, where are they?
- A.** Existing secure detention facilities meet most of the new regulations, but may need some operational or physical plant modifications to be certified as a Specialized Secure Detention Facility. There are currently eight secure detention facilities in New York State (Horizons-NYC, Crossroads-NYC, Woodfield-Westchester, Hillbrook-Onondaga, Monroe, Nassau JDC, Capital District and Erie).

CONSTRUCTION AND SUBSTANTIAL REMODELING

- Q.** In addition to certification, does a county have to seek additional written approval of the Request for Proposal (RFP) before it can be put out for bid?
- A.** Pursuant to 9 NYCRR 180-3.5, OCFS requires approval of plans and designs, including proposed budgets prior to construction. There is no requirement for an additional approval of an RFP.
- Q.** Section 180-3.5(a) refers to procedures prescribed by OCFS and SCOC for construction plans and designs; when will they be promulgated?
- A.** The requirements are currently available from OCFS by request at RTADetention@ocfs.ny.gov and will shortly be posted on the OCFS website.
- Q.** Section 180-3.6(8)(i) requires walls to be reinforced with materials to discourage breakage, what materials would qualify that would also still make the facilities youth-friendly?
- A.** Materials that are reinforced are approved by SCOC and OCFS. There are materials other than cinderblock that are available that look on the outside like any other wall, for example sheetrock can be reinforced with steel behind it.
- Q.** If a county cannot build or remodel a facility in time to meet the October 2018 deadline, what options will they have?
- A.** OCFS and SCOC will continue to work with the counties and existing detention facilities across the state to be ready for October 1, 2018.

FUNDING QUESTIONS

- Q.** Does funding include operating and capital costs, and is debt service included?
- A.** The financial plan assumes the state will reimburse 100 percent of incremental costs incurred by the counties that comply with the tax cap or demonstrate fiscal hardship as required to implement the RTA. There is \$19 million appropriated to finance capital costs to support current projects and new capital projects, including the development of new SSD facilities.
- Q.** Will counties be able to apply for a lump sum reimbursement for capital costs?
- A.** Lump sum reimbursement for capital costs is not available.
- Q.** Is it expected that the responsibility for educational costs will rest on the SSD facility; will these be reimbursed at 100% as well?
- A.** It is expected that each county will be required to submit a comprehensive plan for approval by the Division of Budget (DOB) outlining their anticipated RTA expenses. OCFS highly encourages each county to include all such costs in its submission for approval.
- Q.** Will the promised 100% reimbursement also cover all costs related to temporary adolescent offender housing solutions while counties work on the construction of final housing?
- A.** It is expected that each county will be required to submit a comprehensive plan for approval by the Division of Budget (DOB) outlining their anticipated RTA expenses. OCFS highly encourages each county to include all such costs in its submission for approval.
- Q.** If a county contracts with an engineering and architectural firm to do a feasibility study, will this expense be included in the reimbursement?
- A.** It is expected that each county will be required to submit a comprehensive plan for approval by the Division of Budget (DOB) outlining their anticipated RTA expenses. OCFS highly encourages each county to include all such costs in its submission for approval.

ADMINISTRATION AND OPERATION

- Q.** The sheriff's role in the regulations is minimally outlined; who determines the parameters of the sheriff's role, if any, beyond what is in the regulation?

- A.** Expansion of the sheriff's role beyond what is minimally outlined in the regulations is a local decision. The regulations anticipate the sheriff will inspect the physical plant security (hardware, cameras) and protocols for security.
- Q.** What is the sheriff's liability if facility security is compromised?
- A.** The sheriff and the designated county agency will be jointly administering the SSD facility and will have liability in their official capacity as administrators.
- Q.** Will the sheriff's expenses for providing such services be reimbursable under RTA?
- A.** Any expenses that are anticipated being associated with this limited function should be included in the county's RTA plan and submitted to the DOB for approval.
- Q.** Will remand orders be completed only by the "specially trained magistrate" and/or Youth Part Judge at arraignment?
- A.** The RTA law established a Youth Part for handling AO and "juvenile offender" (JO) cases, including arraignment and additionally provided for the creation of the magistrates to assist in processing arraignments when the Youth Part is not in session. Thus, both will have the authority to issue remand orders.
- Q.** Can an AO be remanded by a Declaration of Delinquency from Probation/Parole?
- A.** No. A Declaration of Delinquency on its own is insufficient for a remand to an SSD. A warrant or securing order would be needed.
- Q.** Can the remand orders be transmitted electronically from the courts or probation?
- A.** This is a question that can only be answered by local authorities.
- Q.** Will there be a requirement for a Detention Risk Assessment Instrument (DRAI) prior to admission?
- A.** There is currently no requirement to use the Detention Risk Assessment Instrument for youth who are not in family court.

- Q.** What is the difference between "commingle" and "shared space"? More particularly, does the reference in section 180-3.3(c)(1)(ii) to "share space" mean "commingle"?
- A.** To commingle would be to permit AO, JO, and "juvenile delinquent" (JD) youth to be in one place at the same time. Shared space would be a room or area that each youth group can use at separate times, thus sharing it while not commingling. Section 180-3.3(c)(1)(ii) contains the exception that allows AO, JO and JD youth to be together in a shared space (e.g., to be in the same classroom at the same time) for the specific purposes of education, infirmary, fire drills, transport to the facility, or as approved by OCFS and SCOC.
- Q.** Two sections refer to gender identity, sections 180-3.4 and 180-3.10(c), which prompted questions regarding definitions.
- A.** The two sections serve different purposes. Section 180-3.4 establishes basic guidelines by which an SSD facility operates, including non-discrimination policies, policies to prevent child abuse and compliance with the Prison Rape Elimination Act (PREA). The non-discrimination section protects the lesbian, gay, bisexual, transgender and intersex (LGBTI) community and provides a definition for such purposes. Section 180-3.10(c) establishes basic guidelines for classification of youth upon admission and mirrors the PREA standards that require transgender youth to be housed based on an overall assessment for their health and safety, including but not limited to their gender identity. For reference, see OCFS informational letter 16-OCFS-INF-10, *Sexual Orientation, Gender Identity, and Gender Expression*, which may be obtained on the OCFS website:
https://ocfs.ny.gov/main/policies/external/OCFS_2016/.
- Q.** What is OCFS looking for in the rapid response team plan?
- A.** Please see section 180-3.11(c)(2) for guidance. The staff who will be part of the rapid response team will have received all the required training listed in section 180-3.11(f) and a typical plan would likely add additional enhanced de-escalation training, crowd control, and mechanical and physical restraint techniques.
- Q.** What is the "manner required by OCFS" for the submission of a waiver request?
- A.** A written request submitted to OCFS that meets the requirements of section 180-3.19(b), along with any other documentation necessary to substantiate the need for the waiver would be sufficient.