

Rights of Institutionalized Children:

(IN ACCORDANCE WITH THE
NEW YORK OFFICIAL COMPILATION OF
CODES, RULES AND REGULATIONS)

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Office of Juvenile Justice and Delinquency Prevention
Law Enforcement Assistance Administration
U. S. Department of Justice

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Edited by
M. S. Goddard

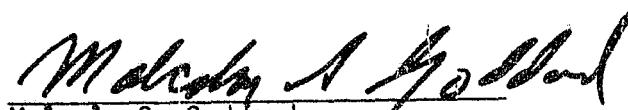
Office of Juvenile Justice and Delinquency Prevention
Law Enforcement Assistance Administration
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INTRODUCTION

The attached regulations contain the following sections pertaining to Rights of Institutionalized Children.

1. Prohibited Forms of Punishment @ Sec. 168.1
2. Standards for the Use of Room Confinement @ Sec. 168.2
3. Standards for the Use of Physical Restraints @ Sec. 168.3(a)
4. Standards for the Use of Medical Restraints @ Sec. 168.3(b)
5. Standards for the Use of Group Confinement @ Sec. 168.4
6. Powers and Duties of the Boards of Visitors @ Sec. 168.5
7. Reporting of Abuse and Use of Physical Force @ Sec. 168.6
8. Confidentiality of Juvenile Files @ Sec. 168.7
9. Due Process Parole Revocation Hearing Procedures with Right to Legal Counsel & Independent Hearing Officers @ Sec. 169.1-169.10
10. Types of Treatment Facilities @ Sec. 170.1-170.8
11. Bill of Rights of Juveniles @ Sec. 171.1-171.10
 - a. Dress Code
 - b. Hair Length & Style
 - c. Religious Freedom
 - d. Mail Censorship
 - e. Posting of Rules & Regulations
 - f. Telephone Calls
 - g. Searches
 - h. Visitation
12. Prohibition Against the Use of Residents to Apprehend Runaways @ Sec. 171.10
13. State Transfer Board to Monitor Transfers from Minimum to Maximum Security Facilities

These regulations were filed by the Division's General Counsel during the period from 1972-1975 at the recommendation of the Division for Youth's Office of Ombudsman upon the order of Milton Luger, Director of the N.Y. State Division for Youth.


Malcolm S. Goddard
General Counsel and Director
of Ombudsman

Dated: June, 1976

Postscript: Subsequently, these regulations were used as a source for the Standards on Residential Supervision of the Advisory Committee on Standards for the Administration of Juvenile Justice, Office of Juvenile Justice and Delinquency Prevention, LEAA (1977); pursuant to Public Law 93-415.

The following sections should be
cited as: 9N.Y.C.R.R. Sec. _____
(filed _____ 19__)

PART 168

STATE SCHOOLS AND CENTERS

(Statutory authority: Executive Law, art. 19-G, §§ 500, 501, 510)

Sec.	Sec.
168.1 Discipline of children	168.5 Powers and duties of the boards of visitors
168.2 Standards relating to the use of room confinement	168.6 Reporting to counsel's office
168.3 Use of physical and medical restraints	168.7 Confidentiality of Division for Youth records
168.4 Group confinement	

Historical Note

Part (§§ 168.1—168.2) added, filed Feb. 9, 1972.

Section 168.1 Discipline of children. (a) Abuse of children in any form, including corporal punishment, is prohibited.

(b) Deprivation of meals, mail and family visits, as methods of punishment, is prohibited.

(c) A child may not be punished for failing or refusing to eat.

(d) Punishment, control and discipline of children shall be an adult responsibility and shall not be prescribed or administered by children.

(e) Every school and center shall submit its discipline policies and any amendments thereto in writing to the deputy director of rehabilitation services or his designee for approval prior to implementation.

(f) Notice in writing of any violations of subdivisions (a)-(d) of this section shall be immediately reported by the facility superintendent or director to the deputy director of rehabilitation services or his designee.

Historical Note

Sec. added, filed Feb. 9, 1972; amds. 23, 1974. Amended (e) and (f), filed: July 18, 1973; May 23, 1974 eff. May

168.2 Standards relating to the use of room confinement. (a) *Definition of room confinement.* For the purpose of this Part, the term *room confinement* shall mean confinement of a child in a room, including the child's own room, when locked or when the child is authoritatively told not to leave.

(b) *Room confinement shall not be used as punishment.* It shall be used only in cases where a child constitutes a serious and evident danger to himself or others. It is not to be considered, in itself, as a method or technique of treatment.

(c) *Place of confinement—environmental needs.* Places of confinement within the institution shall be designated by the institution superintendent (or director) and approved by the deputy director of rehabilitation services or his designee. The place of confinement shall be lighted, heated and ventilated the same as other comparable living areas in the institution.

(d) *Required furniture and furnishings within the place of confinement.* The place of confinement shall be furnished with the items necessary for the health and comfort of the occupant, including, but not limited to, a bed, chair, desk or chest, mattress, pillow, sheet and blanket. If the possession of any of these items would be detrimental to the safety of the occupant or others, they may be removed during that period upon authorization by the superintendent (or director) or the acting superintendent (or director).

(e) *Authorization of room confinement.* Room confinement shall be authorized only by the superintendent (or director) or the acting superintendent (or director). Authorization should be obtained prior to actual placement in room confinement. In instances where immediate physical restraint is clearly necessary, authorization must be obtained within 15 minutes of lock-up.

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(f) *Maximum period of confinement.* The maximum period of confinement shall not exceed 24 consecutive hours without the approval of the deputy director of rehabilitation services or designee within the bureau.

(g) *Visitation.* For the purpose of this Part, a visit shall mean actual entry into the room of confinement with the child or removal of the child from the room of confinement for the purpose of discussion or counseling. A visit shall not include routine visual checks or discussion through the door or window of the confinement room. Children in room confinement shall be visited at least once each day by the following institutional personnel:

(1) *Administrative staff*—a person at least at the level of senior youth, division counselor assistant director of cottage program or higher.

(2) *Clinical staff*—psychiatrist, psychologist, social worker.

(3) *Medical staff*—a nurse or physician shall examine the child in room confinement on a daily basis.

A record of visits shall be maintained by the school (or center) on forms designated by the division and shall be posted on the door of the confinement room during the entire period of confinement.

(h) *Reading materials.* Educational and recreational reading materials shall be provided within the first 24 hours unless the superintendent (or director) or acting superintendent (or director) shall determine that such materials shall be detrimental to the child's rehabilitation. These materials shall be provided on a daily basis thereafter.

(i) *Recreation and exercise.* For the purpose of this Part, recreation and exercise shall be defined as an activity taking place outside the room of confinement and shall mean to include, sports, athletics, games, light physical exercise and like activities. It shall not include hard labor, unduly arduous exercise and other activities of a generally unpleasant or punishing nature. Recreation and exercise shall be provided on a daily basis for at least one prescribed period of not less than 30 minutes unless the superintendent (or director) or acting superintendent (or director) shall authorize its deletion upon determination that such a liberty would present a serious and evident danger to the child or others.

(j) *Reports of room confinement.* Schools and centers must report each instance of room confinement, lasting more than one hour, on forms designated by the division. Every instance where physical or medical restraints are used shall be reported on these forms, regardless of the length of time of the subsequent confinement. Reports are to be submitted on a weekly basis to the director of the bureau of children's institutional services. For the purpose of this Part, a week begins on a Monday and ends on a Sunday. Reports are to be submitted on or before Tuesday of the following week. A copy of each report shall be sent to the ombudsman assigned to that institution.

(k) *Consecutive periods of room confinement.*

(1) Any student who is returned to room confinement within six hours of his release shall be considered to have been in continuous room confinement for purposes of reporting and seeking central office approval; however, a notation as to unsuccessful efforts to return the student to program should be made so that an accurate description of the confinement is available.

(2) Return to room confinement after a lapse of six hours from the time of release shall be considered as commencing a new period of room confinement for the purpose of reporting and seeking central office approval.

(3) Manipulation of consecutive periods of room confinement to evade reporting and approval requirements, or to evade the spirit of the division's regulations, is prohibited.

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(l) *Review and request for extension of room confinement.* A review of the necessity for continued room confinement shall be made prior to the beginning of each new 24 hour period by the superintendent (or director) or acting superintendent (or director). Room confinement may be extended beyond the 24 hours only with the approval of the deputy director of rehabilitation services or designee. Approval shall be obtained prior to the beginning of each 24 hour period. Initially, such requests may be made orally (by telephone). The request must then be submitted in writing on forms designated by the division. This written request must be forwarded to the deputy director of rehabilitation services or his designee within 24 hours of the oral request.

(m) Every effort shall be made to return the child to the regular program of care as quickly as possible.

Historical Note

Sec. added, filed Feb. 9, 1972; emds. 23, 1974. Amended (c), (f) and (k).
filed: July 18, 1973; May 23, 1974 eff. May

Section 168.3 Use of physical and medical restraints.

(a) Physical restraints. Physical restraints shall be used only in cases where a child is uncontrollable and constitutes a serious and evident danger to himself or others. They shall be removed as soon as the child is controllable. Use of physical restraints shall be prohibited beyond one-half hour. If restraints are placed on a child's hands and feet, the hand and foot restraints are not to be joined, as for example, in hog tying. When in restraints, a child may not be attached to any furniture or fixture in the room. Nothing in this section shall preclude the use of restraints in the transportation of a child from one institution to another.

(1) The division shall prohibit the utilization of foot manacles.

(2) Physical restraints may be utilized beyond one-half hour only in the case of vehicular transportation where such utilization of physical restraints is necessary for public safety.

(b) Medical restraint. For the purposes of this Part, medical restraint shall mean medication administered either by injection or orally for the purposes of quieting an uncontrollable child.

(1) Medical restraint shall be administered only in situations where a child is so uncontrollable that no other means of restraint can prevent the child from harming himself.

(2) Medical restraint shall be authorized only by a physician and be administered only by a registered nurse or a medical doctor.

(c) Prn orders of psychiatric medication. A "pro re nata" order, authorizing a registered nurse to administer prescribed psychiatric medication, for purposes of crisis intervention, may be used by the Division for Youth pursuant to the following guidelines:

(1) Prescription by medical doctor. Before any prn order may be prescribed, a medical doctor must examine the child and determine the need for such an order in terms of the individual child's ongoing treatment needs at the facility. These prn orders shall be prescribed on an individual basis and shall not be prescribed pro forma to all child at the time of their arrival at a facility, as follows:

(i) The medical doctor must sign the order and the medical doctor must provide specific instructions and guidelines for the nurse.

(ii) Periodic review of all prn orders must be made by a medical doctor, monthly, including physically examining the child.

(iii) At the time of the periodic review, the medical doctor must indicate, in writing, reasons for his continuing the prn order.

(2) Administration by registered nurse. A registered nurse may administer a prn order when the actions of the child clearly present a danger to himself or other residents, as follows:

(i) She must physically examine the child and refer to the child's medical record including the specific instructions left by the medical doctor for utilization of the prn order.

(ii) The pulse and blood pressure of children receiving such medication must be taken during the first half hour by the nurse and periodically thereafter until his release.

(iii) The nurse must keep a record indicating the results of those examinations and shall prepare a medication report indicating reasons giving rise to her dispensing the medication.

(iv) If the initial or subsequent examination by the nurse reveals the development of any symptoms indicating an adverse reaction to the medication, she shall immediately notify the medical doctor.

(d) Reporting requirements. Use of physical and medical restraints shall be reported, pursuant to subdivision (j) of section 168.2 of this Part.

Historical Note

Sec. added, filed July 18, 1973; amd. filed Aug. 2, 1974.
eff. Aug. 2, 1974. Amended
(a) and (b) (2), changed

"(c)" to "(d)" and added new
"(c)". Amd. filed Feb. 26,
1975 eff. Feb. 26, 1975.
Amended (a) (1), (a) (2), changed
"(a) (3)" to "(a) (2)", amended
(c), (c) (1), and (c) (2).

168.4 Group confinement. (a) Group confinement shall be construed to include situations where a child is separated from the general population and normal daily program by confinement in a locked cottage or living unit.

(b) *Group confinement shall not be used as punishment.* It shall be used only in cases where a child constitutes a serious and evident danger to himself or others, is himself in serious and evident danger, or demonstrates by his own behavior or by his own expressed desire, that he is in need of special care and attention in a living unit separate from his normal surroundings.

(c) Each institution wishing to institute a group confinement program must submit a detailed description of the program, including regulations governing its administration to the deputy director of rehabilitation services for approval.

(d) Each institution administering an approved group confinement program shall maintain a daily log indicating the number of children in group confinement and their period of stay in the program. This information shall be forwarded to the director or his designee monthly.

(e) The ombudsman for each institution administering an approved group confinement program shall have access to the daily log and the confinement area. It shall be his responsibility to report any deviation from the approved program to the institution's superintendent or director and, in an appropriate case, he may include documented deviations in his ombudsman's reports.

(f) Where institutions instituted group confinement programs prior to the adoption of this section, they shall submit detailed written program description and regulations to the deputy director of rehabilitation services within 30 days from receipt of notice of adoption of this section. Any institution failing to have an approved program within 60 days of the adoption of this Part, shall terminate the use of group confinement.

(g) Program description, regulations and amendments governing each approved group confinement program shall be kept on file at the institution and in the Albany central office.

(h) Changes in group confinement programs and regulations shall be approved in the same manner as the initial program was approved.

Historical Note

Sec. added, filed July 18, 1973; amd. filed and (2), May 23, 1974 eff. May 23, 1974. Amended (c)

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168.5 Powers and duties of the boards of visitors. (a) Members of the boards of visitors shall be selected from a cross-section of lay people in the community including but not limited to, individuals in the fields of law, judiciary, education, sociology, psychology and other related fields who shall serve in an advisory capacity to the superintendent of the institution to which they are appointed. The boards may report to the Governor, directly, when they deem it appropriate in the performance of its duties. Members of the boards of visitors, because of their deep concern for the welfare of the youths in care within their respective institutions, are in a position to offer pertinent and valuable assistance, comments and advice to the superintendent and to the director of the division for youth, in order to improve the facility's treatment and training program.

(b) The boards of visitors shall hold at least six meetings per annum with the superintendent and cause a copy of the minutes and proceedings thereof to be sent forthwith to each member of the boards of visitors, to the superintendent of the institution and to the director of the Division for Youth.

(c) The boards of visitors, subject to the approval of the superintendent, have the authority to seek ways of establishing cooperation, understanding and mutual respect between the institution and the local community.

(d) The boards of visitors shall submit by the 31st day of July, each year, a detailed annual report of its visits and meetings and suggestions to the superintendent of the institution for the year ending on the 30th day of June preceding the day of such report, and such report shall be forwarded by the superintendent of the institution together with the superintendent's response and commentary, to the director of the Division for Youth by the 31st day of August of each year.

(e) The boards of visitors, subject to the approval of the superintendent, have the authority to act as liaison with services within the institution, such as recreational, educational, cultural and therapeutic services which have not been provided in the regular institutional program.

(f) The boards of visitors, subject to the approval of the superintendent, have the authority to aid its respective institution in the establishment of programs within the local community which will assist youths residing in the institution to secure local employment, education, recreational, cultural and therapeutic services.

(g) Members of the boards of visitors shall have access to residents and shall have the right to inspect all physical areas, facilities and programs conducted under the auspices of their respective institution. They may request of the superintendent the appearance of any staff member to attend regular meetings in order to remain fully briefed and knowledgeable as to institutional operations.

(h) The boards of visitors, as agents of the division, and with its approval, may receive and accept any grant, gift, devise or bequest of money or land to it, the State, board, division or institution, subject to the provisions of the State Finance Law. Any such acquisitions, including income therefrom, shall be applied or expended subject to the regulations of the division.

(i) Members of the boards of visitors shall not receive any compensation for

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their services, but shall receive actual and necessary traveling and other expenses, to be paid after audit as other current expenditures of the institutions.

Historical Note

Sec. filed Dec. 11, 1974; renum. 168.6, filed April 11, 1975.
Feb. 6, 1975; new added by renum. 168.6.

168.6 Reporting to counsel's office. (a) All incidents which could give rise to claims against the State shall be reported in writing to the deputy director of rehabilitation services and to the office of general counsel within 48 hours. Incidents to be reported shall include but not be limited to the following: damage to property by students, death of any student in program, commission of criminal acts by staff or students, use of physical force by staff and injury of staff in line of duty.

(b) General counsel shall review the incident reports and supporting material to determine those incidents which have a substantial likelihood of giving rise to a claim or proceeding against the State. He shall then give notice of these claims to the Attorney General as required pursuant to section 72 of the Public Officers Law.

Historical Note

Sec. filed Dec. 12, 1974 eff. Dec. 12, 1974.

168.7 Confidentiality of Division for Youth records. (a) Records or files of children who are or have been under the care or supervision of the Division for Youth may not be disclosed in whole or part to any person, agency or institution, other than the Division for Youth and New York State family courts with the following exceptions:

(1) Records or pertinent parts thereof must be disclosed pursuant to Supreme Court order as authorized by Social Services Law, article 6, section 372.

(2) Educational records may be disclosed to the extent that when a child is attending or has attended a school located on the premises of a Division for Youth facility:

(i) All school records may be visually displayed to a child's parent, in person only.

(ii) The child's name, a list of subjects studied, grades received, record of attendance, last grade level achieved, previous school attended, and standardized test scores only may be forwarded to the principal or guidance counselor of a school to which a child may be sent or desires to attend.

(3) Medical records may be disclosed to a physician at the written request of the physician and with the written approval of the child's parent or guardian; however, if the child is over the age of 18 years at the time of the request, only his or her approval shall be necessary, in addition to the physician's request.

(4) Records, or summaries of records, may be disclosed to the probation department of a Family Court of the State of New York, on request for use in accord with Family Court Act, article 1, section 166, article 7, sections 746(b), 783.

(5) The division is prohibited from making records available to a county probation department, pursuant to section 372.3 of the Social Services Law.

(6) Information concerning a child's date of admission, release, revocation of release, and discharge only may be forwarded to the director of a New York Social Welfare district or State or Federal agency on request, when such information is necessary to enable said district or agency to determine that the child is under its jurisdiction thereby enabling it to provide for a child's welfare and the necessities of life.

(7) Records pertaining to the vital statistics of children may be disclosed to

law enforcement authorities when a child is absent from an institution without proper authorization or has violated a condition of release.

(8) Records may be made available to authorized child caring agencies, within and without the State, which have actual custody of the youth and request specific information in writing for the purpose of developing a program to meet his needs. However, when the request is made by an out-of-State child caring agency the division shall request written confirmation, from the juvenile compact administrator for the State in which the requesting agency is located, that the agency is authorized to provide child care within that State and is in good standing. No record shall be made available until such information is received by the division in writing.

(9) Division records shall be made available to the Attorney General or his designee in furtherance of the duties of that office.

(10) Records pertaining to youths referred to the division as a condition of probation or pursuant to a continuance authorized by section 502 of the Executive Law shall be made available to the referring court or its probation department upon written request during the period of referral.

(b) When requests for records or other information concerning a child is received by any agent of the Division for Youth, and when such information is not included in the exceptions listed in paragraph (1) through (10) of subdivision (a) of this section, the correct response shall be, "We are not authorized by law to disclose whether or not any individual was ever under our jurisdiction."

(c) No part of this section shall be construed to prohibit the free exchange of information within the Division for Youth, or between the division and New York Family Courts, when the best interest and treatment of the child is at issue, nor shall it serve to prohibit a bona fide study of information, with the approval of the executive deputy director and the deputy director for research of the Division for Youth and when guided by the superintendent or director of the institution, agency, or facility at which the study is being conducted, with the stipulation that the name of no child shall be disclosed by the study group. In addition all such study groups shall sign an agreement to this effect before approval for such study shall be granted.

(d) When any child who has been under the care of the Division for Youth, according to title II, article 19-G, of the Executive Law, reaches the age of 20 years, and a child cared for by the Division for Youth, according to title III, article 19-G, of the Executive Law, reaches the age of 21, all records possessed by said division shall be sealed and shall only be revealed by the division, pursuant to an order to the Supreme Court of the State of New York, except such records may be made available to the Attorney General of the State of New York in furtherance of the duties of that office.

Historical Note

Sec. filed Dec. 13, 1974 eff. Dec. 13, 1974.

168.8

Historical Note

Sec. added by renum. 168.5, filed Feb. 6, 1975; renum. 168.5, filed April 11, 1975.

PART 169

RELEASE AND RETURN

(Statutory authority: Executive Law, art. 19-G, §§ 500, 501, 510, 523)

Sec.		Sec.	
169.1	Revocation of release, grounds	169.5	Rights of parties
169.2	Notice of grounds for revocation of release	169.6	Conduct of hearing
169.3	Initiation of release revocation proceeding	169.7	Examination of record after hearing
169.4	Notice of hearing, statement of allegations and return to custody	169.8	The decision
		169.9	Judicial review
		169.10	Voluntary return

Historical Note

Part (§§ 169.1—169.10) added, filed Feb. 9, 1972 eff. Feb. 9, 1972.

Section 169.1 Revocation of release, grounds. Release pursuant to section 523 of the Executive Law may be revoked by the division upon a violation of one or more of the following conditions of release including, but not limited to:

- (a) failure to adhere to reasonable curfew set by youth worker or parent.
- (b) prohibition against association with persons whose influence would have a detrimental affect upon the releasee, including but not limited to persons previously convicted of crime or of a known criminal background.
- (c) requirement of proper attendance in school in accordance with the provisions of part I of article 65 of the Education Law.
- (d) failure to refrain from the taking of drugs.
- (e) failure to abstain from alcohol.
- (f) failure to report to the youth worker when required by the youth worker.
- (g) prohibition against the commission of an act which would be a crime if committed by an adult.
- (h) prohibition against operation of an automobile without permission of the youth worker or parent.
- (i) prohibition against being habitually disobedient and beyond the lawful control of parent or other legal authority.
- (j) prohibition against running away from the lawful custody of parent or other lawful authority.
- (k) any other reasonable condition of which the releasee is informed.

Historical Note

Sec. added, filed Feb. 9, 1972 eff. Feb. 9, 1972.

169.2 Notice of grounds for revocation of release. Each child released from a school or center of the division, pursuant to section 523 of the Executive Law, shall receive, prior to his release, an orientation session at which he shall be informed orally and receive in writing the terms of his release, including notification of the grounds upon which release may be revoked. A copy of the terms of release shall be mailed to the releasee's parent or guardian at the time of release.

Historical Note

Sec. added, filed Feb. 9, 1972 eff. Feb. 9, 1972.

169.3 Initiation of release revocation proceeding. (a) The youth worker who has reasonable knowledge of the child's behavior shall prepare a report documenting

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reasons why return to a school or center is in the best interest of the child and/or the community, including specific violations of prescribed conditions of release.

(b) Said report, if endorsed by the immediate supervisor of the youth worker shall be submitted to the director of the community services bureau.

(c) The director of community services bureau or his designee shall review the report and make a determination, which may be:

- (1) continuation of the child's present release program;
- (2) modification of the child's release program;
- (3) referral to either Family Court or a court of other jurisdiction for other disposition where it is the opinion of the director of Children's Services Bureau that a new placement is required;
- (4) return to a State training school is in the best interest of the child and/or the community

Historical Note

Sec. added, filed Feb. 9, 1973 eff. Feb. 9, 1972.

169.4 Notice of hearing, statement of allegations and return to custody. When the director of community services bureau determines that it is in the best interest of the child and/or the community that the child should be returned to the division's facility program for further treatment, the following procedure should be followed:

(a) Documentation of the grounds upon which the recommendation that release be revoked shall be forwarded to the office of the counsel of the division with a request that a revocation hearing be held.

(b) Counsel's office shall prepare a notice of hearing which shall include a statement describing the allegations upon which the hearing will be based and a warrant for apprehension of the released child to be used at the discretion of the director of community services.

(c) The notice of hearing shall state in writing the rights of the releasee to a hearing, including the right of each party to be represented, to testify, to produce witnesses, to present documentary evidence, to examine opposing witnesses to the extent necessary to assure that the hearing officer is accurately informed of the facts and to examine evidence.

(d) The notice of hearing shall be forwarded to the director of community services who shall arrange for an employee, designated by the division, to apprehend the releasee named in the notice of hearing and have said releasee returned to the custody of the division. However, where it is the opinion of the director of community services that there are reasonable grounds to believe the child would appear at the time and place of hearing without being taken into custody, the child shall be left in the community.

(e) Copies of the notice of hearing shall be served by mail upon releasee, parents of the releasee, the releasee's legal counsel as soon as he is identified, and the hearing officer who shall conduct the revocation hearing.

Historical Note

Sec. added, filed Feb. 9, 1972 eff. Feb. 9, 1972.

169.5 Rights of parties. (a) The revocation hearing shall be held within 20 days from the date that the releasee is taken into custody and within 20 days of mailing the notice of hearing to the releasee where the releasee is not taken into custody, subject to the authority of the hearing officer to grant reasonable adjournments.

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(b) The hearing shall be presided over by a hearing officer who shall be an attorney employed by the division exclusively to conduct hearings for the division.

(c) The releasee shall have the right to legal counsel at the hearing.

(d) The office of counsel of the Division for Youth shall act as agency representative at the hearing.

(e) *Notification of hearing date.* At least five days prior to the date of hearing, notice shall be given to the parties and representatives by the hearing officer, including: the releasee, the releasee's attorney, and the parents of the releasee. The notice to the parties shall inform them:

(1) of the date and place of hearing

(2) of the name and address of the hearing officer who will conduct the hearing

(f) Opportunity shall be afforded the releasee or his attorney, upon request, to examine copies of documentary evidence in the possession of the division which the division plans to introduce at the hearing.

(g) The following persons may be present at the hearing: the releasee, his parents or lawful guardian, his legal counsel, counsel for the division, witnesses of both parties and any who may be called by the hearing officers, representatives of the division and other persons may be admitted by the hearing officer in his discretion.

Historical Note

Sec. filed Feb. 9, 1972; amd. filed Dec. 2, 1974 eff. Dec. 2, 1974. Amended (a).

169.6 *Conduct of hearing.* (a) *The hearing officer shall preside.* He shall make an opening statement describing the nature of the proceeding, the issues and the manner in which the hearing will be conducted.

(b) The hearing officer shall have all the powers conferred by law and regulations of the division to acquire attendance of witnesses and the production of books and records and to administer oaths and to take testimony.

(c) The hearing officers shall conduct an impartial hearing.

(d) Technical rules and evidence followed in a court of law shall not apply, but evidence must be relevant and material.

(e) Each party has a right to be represented by counsel, or other representative, to testify, to produce witnesses to testify, to offer documentary evidence, to examine opposing witnesses to the extent necessary to assure that the hearing officer is accurately informed of the fact, to offer evidence in rebuttal and to examine any documentary evidence offered by the other party.

(f) The hearing officer may, in his discretion, order the removal of any person present at a hearing when the presence of that person interferes with the orderly conduct of the hearing.

(g) The hearing may be adjourned by the hearing officer for good cause on his own motion or at the request of either party.

(h) A verbatim record of the hearings shall be made.

Historical Note

Sec. added, filed Feb. 9, 1972 eff. Feb. 9, 1972.

169.7 *Examination of record after hearing.* The record of the hearing shall be confidential, but it may be examined by either party, including the releasee, his parent or his designated legal representative.

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Historical Note

Sec. added, filed Feb. 9, 1972 eff. Feb. 9, 1972.

169.8 The decision. (a) The hearing officers shall issue a decision determining whether the releasee has knowingly violated any of the conditions of his release as alleged. The hearing officer's decision shall be based upon substantial evidence presented at the hearing. Where substantial evidence is found to exist, the hearing officer shall order revocation of release. Where the hearing officer finds that there is no substantial evidence upon which the allegation is based, the hearing officer shall order the return of the releasee to the community under continued aftercare supervision.

(b) The hearing officer, on motion of the releasee or his representative, or on his own motion, may order a releasee returned to the community under continued aftercare supervision at the time of the hearing where there is no evidence to support the allegations presented at the hearing.

(c) In all cases, a written decision shall be served upon the parties to the proceedings within four days following the hearing.

(d) Notice of revocation of release shall also be sent to the Family Court which placed the releasee.

Historical Note

Sec. added, filed Feb. 9, 1972 eff. Feb. 9, 1972.

169.9 Judicial review. In the letter transmitting the decision, the hearing officer shall make clear references to the availability of judicial review, pursuant to article 78 of the Civil Practice Law and Rules.

Historical Note

Sec. added, filed Feb. 9, 1972 eff. Feb. 9, 1972.

169.10 Voluntary return. A child on release status may volunteer to return to the custody of the division for youth without a revocation hearing. In such cases, release shall be revoked without a hearing, provided that a waiver of hearing is signed by the youth while represented by an attorney, who shall determine that the youth is aware of the significance of his act.

Historical Note

Sec. added, filed Feb. 9, 1972 eff. Feb. 9, 1972.

PART 170

TITLE II FACILITIES

(Statutory authority: Executive Law, art. 19-G, § 502, subd. 7)

Sec.	Sec.
170.1 Definitions	170.5 Refusal to accept
170.2 Referral process	170.6 Discharge of youth
170.3 Age jurisdiction	170.7 Period of residence
170.4 Age jurisdiction of addicts and drug abusers	170.8 Description and listing of title II facilities

Historical Note

Part (§§ 170.1—170.8) added, filed July 23, 1973 eff. July 23, 1973.

Section 170.1 Definitions. (a) *Title II facility.* A facility under the jurisdiction of the Division for Youth to which children are referred under the provisions of title II, article 19-G of the Executive Law.

(b) *Referral.* The procedure set forth in section 502, title II, article 19-G of the Executive Law for the admission of youths into title II facilities.

Historical Note

Sec. added, filed July 23, 1973 eff. July 23, 1973.

170.2 Referral process. Youths may be referred to the Division for Youth for admission to one of its title II facilities:

(a) Upon the written request of a duly authorized association, agency, society or institution, and

(1) if both parents shall then be living, upon the written consent of the surviving parent, if either parents of such youth be dead

(2) if either one of such parents shall have abandoned such youth, upon written consent of the other of such parents

(3) if the father of such youth shall have neglected to provide for his family, or if such youth is born out of wedlock, upon the written consent of the mother of such youth

(4) if both parents of such youth are dead, upon the written consent of the guardian of the person of such youth lawfully appointed; or

(5) by order of the family court or by the county court of the county in which such authorized association is located upon application of the association, and on such notice to such persons as the court may in its discretion prescribe, if both parents of such youth are dead, and no legal guardian of the persons of such youth has been appointed, and no guardian has been appointed by will or by deed by either parent thereof, or if the parent or parents be legally declared insane or mentally defective, or if the parents have abandoned such youth, such order and the papers upon which it was granted shall be filed in the court and a duplicate original of such order shall also be filed in the office of the county clerk in which such court is located.

(b) (1) after a youth has been placed on probation by a court and a condition of that probation is that he spend a period of time in such facility; or

(2) after the youth has been charged with the commission of a crime and the court has continued the proceeding on condition that the youth spend a period of time in such a facility or has been adjudicated a juvenile delinquent or a person in need of supervision pursuant to sections 753 and 754 of the Family Court Act.

Historical Note

Sec. added, filed July 23, 1973 eff. July 23, 1973.

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170.3 Age jurisdiction. Youths cared for in title II facilities, other than youth development centers, shall be between the ages of seven and 18 years of age at the time of referral.

Historical Note

Sec. added, filed July 23, 1973 eff. July 23, 1973.

170.4 Age jurisdiction of addicts and drug abusers. Youths cared for in title II youth development centers, pursuant to section 504 of the Executive Law, who are addicts or drug abusers shall be between 13 and 18 years of age at the time of the referral.

Historical Note

Sec. added, filed July 23, 1973 eff. July 23, 1973.

170.5 Refusal to accept. The division may in its discretion refuse to admit any youth into a title II facility if such admission would not be in the best interest of the youth.

Historical Note

Sec. added, filed July 23, 1973 eff. July 23, 1973.

170.6 Discharge of youth. Any youth may be discharged at any time after acceptance in a title II facility if deemed advisable in the discretion of the director of the division. If discharged, such youth shall be returned to the referral agency or court.

Historical Note

Sec. added, filed July 23, 1973 eff. July 23, 1973.

170.7 Period of residence. The period of residence at a title II facility shall not exceed two years.

Historical Note

Sec. added, filed July 23, 1973 eff. July 23, 1973.

170.8 Description and listing of title II facilities. (a) **Youth camps.** Youth camps consist of camps in rural and forest areas, each camp housing 60 youths. Trained professional counseling and supervisory staff, in conjunction with such programs as remedial education, high school equivalency degrees, pre-vocational training, and development of maintenance skills help meet the critical needs of the growing adolescent and prepare him for a return to the community.

Location of youth camps.

- (1) Edward R. Cass Youth Camp
Rensselaerville, New York 12147
- (2) Youth Camp
Great Valley, New York 14741
- (3) Austin MacCormick Youth Camp
R. D. 1
Brooktondale, New York 14817
- (4) Charles Loring Brace Camp
Route 8
Masonville, New York 12804
- (5) Annsville Youth Camp
Rural Route 1
Taberg, New York 13471

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(b) Youth centers for boys and girls. The youth center is a facility dealing with 50 residents or less in a community oriented program providing vocational and academic activities both within the community and at the center, in order to help the youngster to adjust to community living.

Location of youth centers.

- (1) Sam A. Lewisohn Center
West Brentwood
Long Island, New York 11717
- (2) South Kortright Center for Boys
South Kortright, New York 13842
- (3) South Lansing Center for Girls
South Lansing, New York 14884
- (4) Overbrook Center for Children
R.D. 2
Red Hook, New York 12571

(c) *Youth development centers.* Youth development centers are designed to serve adolescent drug users between the ages of 13 and 18. Counseling, recreational and educational activities are planned for quickly obtainable results and short-range goals. Programs consist of both residential and nonresidential treatment services and include drug programs which employ group, individual and peer counseling.

Location of youth development centers.

- (1) Youth Development Center 1
120 East 210th Street
Bronx, New York 10467
- (2) Youth Development Center 2
85 East 125th Street
New York, New York 10035
- (3) Youth Development Center 3
272 Jefferson Avenue
Brooklyn, New York 11216

(d) *START centers.* The short-term adolescent resident training centers serve approximately 20 youths. Intensive counseling and group occupational assignments performed at neighboring State or municipal facilities are the mainstays of the program.

Location of START centers.

- (1) Edmund Fitzgerald START Center
Mount Hope Road
Box 144, Hill Station
Middletown, New York 10940
- (2) Monsignor D. Gregory Dugan START Center
Pine Ridge Road
R. D. 4
Auburn, New York 13031
- (3) Willowbrook START Center
1188 Forest Hill Road
Staten Island, New York 10314
- (4) Adelle Levy START Center
Route 22
Amenia, New York 13501

(e) *Youth homes.* The 20-bed youth home, also referred to as an urban home, serves as a home base allowing for schooling or a job in the local area and provide counseling. The community-based setting and the orientation of the program provide the youngsters with the ability to function in a normal environment.

Location of youth homes.

- (1) J. Stanley Sheppard Youth Home
448 West 22nd Street
New York, New York 10011

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- (2) Buffalo Youth Home
389 Elmwood Avenue
Buffalo, New York 14222
- (3) Ernie Davis Youth Home
212 Ash Street
Syracuse, New York 13208
- (4) Rochester Youth Home
55 Greig Street
Rochester, New York 14608
- (5) 18th Street Youth Home
347 East 18th Street
New York, New York 10003
- (6) Martin Luther King, Jr. Residence Youth Home
2322 Valentine Avenue
Bronx, New York 10458

(f) *Apartment-home complex.* A variation of the youth home is the apartment-home complex, also known as group homes, of up to three small units, each of which houses groups of seven young people in three separate apartment buildings or private homes. Each unit has separate apartment houseparents and the entire complex is under the supervision of a director and trained professional counseling staff. The small number of youths in each unit enables them to more easily utilize local resources and gain acceptance in the surrounding neighborhood. These facilities may be established, operated and maintained by the division or the division may contract for their operation with a political subdivision of the State, agencies thereof or supported thereby, or other public or private non-profit corporations, associations, institutions or agencies concerned with youth.

Location of apartment-home complex.

Home 1—New York City

- * 443 West 22nd Street, New York City

Home 2—Buffalo

- * 389 Elmwood Avenue, Buffalo

Home 3—Syracuse

- * 212 Ash Street, Syracuse

Home 4—Rochester

- * 55 Greig Street, Rochester

Home 5—Bronx

- ** 1701 Watson Avenue, Bronx
- ** 828 East 215th Street, Bronx
- ** 3531 Bronxwood Avenue, Bronx

Home 6—Bronx

- * 1260 Commonwealth Avenue, Bronx
- * 1610 Glivan Avenue, Bronx

Home 7—Hempstead

- ** 73 Lafayette Street, Hempstead
- ** 139 West Chester Street, Long Beach
- ** 392 Holly Place, Hempstead

* State owned.

** Leased.

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Home 8—Niagara Falls

- 505 Lynwood Avenue, Buffalo
- 311 Minnesota Avenue, Buffalo
- 2518 Delaware Avenue, Buffalo

Home 9—Staten Island

- 211 Holden Avenue, Staten Island
- 599 Richmond Avenue, Staten Island
- 78 Lortel Avenue, Staten Island

Home 10—Westchester

- Warburton Avenue, Yonkers
- 55 Dekalb Avenue, White Plains
- 535 So. 9th Avenue, Mount Vernon

Home 11—Nassau-Suffolk

- 3 Hazelwood Drive, Huntington, L.I.

Home 14—Capital District

- 79 Ryckmen Avenue, Albany
- 1133 Eastern Parkway, Schenectady
- 867 Second Avenue, Troy

Home 15—Monroe County

- 548-550 Ridge Road, Rochester
- 50 Browncroft Blvd., Rochester

Home 16—Binghamton

- 61 Kneeland Avenue, Binghamton
- 43 Park Avenue, Binghamton

Home 17—Dutchess County

- 135 Academy Street, Poughkeepsie
- East 98th Street Group Home
657 East 98th Street
Brooklyn, New York
- Lenox Road Group Home
1125 Lenox Road
Brooklyn, New York

Historical Note

Sec. added, filed July 23, 1973 eff. July 23, 1973. Amd. filed Aug. 22, 1975, eff. Aug. 22, 1975.

PART 171

BILL OF RIGHTS FOR JUVENILES

(Statutory authority: Executive Law, art. 19-G, § 502)

Sec.

- 171.1 Introduction
- 171.2 Dress code
- 171.3 Personal appearance
- 171.4 Religious freedom
- 171.5 Mail censorship

Sec.

- 171.6 Posting of rules and regulations
- 171.7 Telephone calls
- 171.8 Searches
- 171.9 Visitation
- 171.10 Pursuit of runaways

Historical Note

Part (§§ 171.1—171.5) added, filed July 18, 1973 eff. July 18, 1973.

Section 171.1 Introduction. In recognition of the fact that juveniles residing in division for youth facilities have certain basic rights which are not lost or made negotiable by the fact of their institutionalization, the division herein commences listing specific inalienable rights applicable to all children in our care.

Historical Note

Sec. added, filed July 18, 1973 eff. July 18, 1973.

- State owned.
- Leased.

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171.2 Dress code. (a) Students have the right to wear their personal clothing if they so choose, or wear combinations of their own clothing and clothing issued by the division in cases where their own clothing does not meet all of their clothing needs.

(b) Clothing issued by the division shall be available to those children lacking personal clothing or who choose to wear issued clothing.

(c) Students have the right to wear items of jewelry.

(d) Students may be prohibited from possessing items of clothing or jewelry which could be utilized in such a way as to endanger themselves or others; however, such restrictions are to be reasonable.

(e) Students have the obligation to follow the same criteria of cleanliness for their own clothing as is required for issued clothing, and any student who violates his obligation, may lose his right to wear the item or items of personal clothing not kept in a clean condition.

(f) The division has the obligation to provide students with reasonable means of cleaning their personal clothing.

(g) Development of self-esteem and individuality through interest in appearance and grooming is to be encouraged.

Historical Note

Sec. added, filed July 18, 1973 eff. July 18, 1973.

171.3 Personal appearance. (a) *Hair style.* Restrictions on the right of students to determine the length and style of their hair is prohibited, except in individual cases where such restrictions are necessary for reasons of health.

(b) *Facial hair.* Restrictions on the right of students to grow facial hair are prohibited, except in individual cases where such restrictions are necessary for reasons of health.

(c) *Health and safety precautions.* Students may be required to observe reasonable precautions where the length and style of their hair could possibly pose a health or safety problem unless said precautions are taken.

(d) *Prior approval.* Where the involuntary removal of a student's hair is determined advisable for reasons of health, the superintendent or director of the facility involved shall make a written request to the facility's middle manager, with a copy to the facility's ombudsman, stating the reasons necessitating such removal and shall not proceed until approval for such action is received.

Historical Note

Sec. added, filed July 18, 1973 eff. July 18, 1973.

171.4 Religious freedom. (a) The division has the obligation to afford its students the right to participate in the religious observances of their parent's faith.

(b) Counseling to members of their faith by authorized representatives of religious denominations is permissible at all division facilities.

(c) The use of physical force, punishment or coercion to compel attendance or participation in religious observances is prohibited.

Historical Note

Sec. added, filed July 18, 1973 eff. July 18, 1973.

171.5 Mail censorship. (a) A student has the unrestricted right to send mail without prior censorship or prior reading.

(b) A student has the right to receive mail without prior reading or prior cen-

possession; however, if the institution suspects the delivery of contraband or cash, it may require the student to open the mail in the presence of a staff member.

(c) A student has the right to mail a minimum of one letter per week at State expense and any number of additional letters at his own expense.

(d) All cash sent to students shall be given to the student or held for his benefit in accordance with the procedures of the institution; however, such procedures shall be in writing and approved by the director or his designee.

(e) Packages are exempt from these provisions and are subject to inspection.

Historical Note

Sec. added, filed July 18, 1973 eff. July 18, 1973.

171.6 Posting of rules and regulations. [Additional statutory authority: Executive Law, §§ 503, 504(2), 518(1)] Each facility shall post in each living area all State and facility rules and regulations which the facility intends to enforce against (or on behalf of) any student.

Historical Note

Sec. added, filed May 1, 1974 eff. 90 days after filing with Secretary of State.

171.7 Telephone calls. [Additional statutory authority: Executive Law, §§ 503, 504(2), 518(1)] (a) Each student shall have the right to make one collect call each week, additional collect calls shall be within the discretion of the facility.

(b) Each student shall have the right to receive any and all calls made to him or her during reasonable hours to be set by the facility.

(c) Such calls may be to or from any person.

Historical Note

Sec. added, filed May 1, 1974 eff. 90 days after filing with Secretary of State.

171.8 Searches. [Additional statutory authority: Executive Law, §§ 503, 504(2), 518(1)] Whenever possible, a student's physical presence must be obtained to search his or her room, locker, and/or possessions. Whenever it is impossible to obtain the physical presence of the student, the facility shall notify him or her in writing as soon as possible thereafter:

(a) that a search has been made.

(b) of any article taken.

Historical Note

Sec. added, filed May 1, 1974 eff. 90 days after filing with Secretary of State.

171.9 Visitation. [Statutory authority: Executive Law, § 500] A student has a right to receive any and all visitors at the times fixed for visits; however, a facility may exclude a student's visitor who is not accompanied by the student's parents, guardian, or by other suitable person. The superintendent has the right to limit the area of visitation in the best interest of the child.

Historical Note

Sec. filed Dec. 13, 1974 eff. Dec. 13, 1974.

171.10 Pursuit of runaways. [Statutory authority: Executive Law, § 500] It is the responsibility of the staff to return runaways to the facility. Residents of the facility can assist staff in this endeavor where it is felt that the presence of a fellow student would assist in talking an escapee to return voluntarily provided that:

(a) Students are accompanied by a staff member at all times.

(b) Students never use force at any time to return the runaway.

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(c) Students will not assume staff responsibilities such as pursuing, locating or apprehending escapees.

Historical Note

Sec. filed Dec. 13, 1974 eff. Dec. 13, 1974.

PART 172

CHILDREN'S ALLOWANCES

(Statutory authority: Executive Law, §§ 503, 504[2], 518[1])

Sec.

172.1 Weekly allowance

Historical Note

Part (§ 172.1) filed Dec. 13, 1974 eff. Dec. 13, 1974.

Section 172.1 Weekly allowance. Every child may receive as compensation for work performed in housekeeping services, facility maintenance and work training programs in all Division for Youth residential programs, for which compensation is otherwise not being provided, a weekly allowance up to one dollar per day for up to seven days a week provided that funds are available therefor.

Historical Note

Sec. filed Dec. 13, 1974 eff. Dec. 13, 1974.

PART 173

FOSTER PARENTS

(Statutory authority: Executive Law, §§ 500[2], 508)

Sec.

173.1 Claims for damage to personal property

Sec.

173.2 Civil actions against foster parents, indemnification

Historical Note

Part (§173.1) added, filed May 1, 1974 eff. immediately.

Section 173.1 Claims for damage to personal property. For purposes of paying claims for personal property damage in accordance with Executive Law, section 503, Division for Youth foster parents will be considered as employees.

Historical Note

Sec. added, filed May 1, 1974 eff. immediately.

173.2 Civil actions against foster parents, indemnification. For purposes of saving harmless and protecting foster parents from financial loss arising out of any civil actions or judgments brought against them for alleged acts resulting in personal injury during the discharge of their duties, foster parents will be considered as employees pursuant to Executive Law, section 501-a.

Historical Note

Sec. filed Sept. 23, 1974 eff. Sept. 23, 1974.

PART 174

REGIONAL SECURE DETENTION FACILITIES

(Statutory authority: Executive Law, § 510-a)

Sec.	Sec.
174.1 Introduction	174.8 Transportation of children to and from regional secure detention facility
174.2 Application	174.9 Responsibility for runaways
174.3 Conditions for admission	174.10 Medical costs
174.4 Refusal of admission	174.11 Contact with child
174.5 Intake procedure	174.12 Removal of child after acceptance
174.6 Duration of stay	174.13 Noncompliance with regulations
174.7 Reimbursement to division	174.14 Enforcement

Historical Note

Part (§§ 174.1-174.14) filed Nov. 29, 1974
eff. Nov. 26, 1974.

Section 174.1 Introduction. This Part, established pursuant to section 510-a of article 19-G of the Executive Law of the State of New York, shall be known as the Division for Youth regional secure detention facilities regulations. The purpose of this Part is to provide basic and uniform provisions for the operation of Division for Youth secure detention facilities for the temporary care and maintenance away from their own homes of alleged and adjudicated juvenile delinquents and persons in need of supervision.

Historical Note

Sec. filed Nov. 29, 1974 eff. Nov. 26, 1974.

174.2 Application. This Part shall apply to secure detention facilities established, operated and maintained by the Division for Youth pursuant to section 510-a of the Executive Law. The term *facility* when used herein shall refer to such secure detention facilities.

Historical Note

Sec. filed Nov. 29, 1974 eff. Nov. 26, 1974.

174.3 Conditions for admission. Children residing in a county which provides or assures the availability of the non-secure detention facilities mandated by County Law, section 218-a(B), will be eligible for admission, provided:

(a) such children are alleged juvenile delinquents or persons in need of supervision held for or at the direction of the family court pending adjudication of alleged juvenile delinquency or need for supervision by such court or pending transfer to institutions to which committed or placed by such court or while awaiting disposition by such court after adjudication, or

(b) such children are held pending a hearing for alleged violation of the conditions of release from a school or center of the division, or

(c) such children are held pending return to a jurisdiction other than the one in which the child is held, and

(d) such children, if remanded by a Family Court, are accompanied by a referring document which shall state the specific section (including subsection) of statute upon which the remand is based, and including the reason why secure, rather than non-secure, detention is deemed necessary, or

(e) such children, if referred by a peace officer, are accompanied by a referring document executed by the peace officer, stating:

(1) the specific section of statute upon which the apprehension and custody are based, and

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(2) the reason why secure, rather than non-secure, detention is deemed necessary, and

(3) that the peace officer has complied with section 724 of the Family Court Act, and

(4) that the peace officer will assure appearance of the child in Family Court on the next day that that court is in session.

Historical Note

Sec. filed Nov. 29, 1974 eff. Nov. 26, 1974.

174.4 Refusal of admission. Notwithstanding compliance with the aforesaid conditions, the Division for Youth:

(a) reserves the right to refuse admission to any child who the division determines should not be detained in a secure detention facility;

(b) reserves the right to limit the number of referrals from any one county;

(c) reserves the right to refuse admission to any child when such admission would be in excess of the approved capacity of a facility;

(d) reserves the right to determine the order of acceptance of admissions after a facility has been filled to capacity or when near capacity;

(e) reserves the right to grant preference to children from the following counties in the Catskill and Hudson Valley regions:

Albany	Montgomery	Saratoga
Columbia	Orange	Schenectady
Delaware	Putnam	Schoharie
Dutchess	Rensselaer	Sullivan
Green	Rockland	Ulster

Historical Note

Sec. filed Nov. 29, 1974 eff. Nov. 26, 1974.

174.5 Intake procedure. Any person requesting admission for a child must furnish a facility with the following:

(a) a statement of the child's age, to be furnished on admission and the name and address of the child's parent or guardian, to be furnished on admission or within 24 hours thereafter;

(b) written permission for medical treatment to be rendered to the child;

(c) the names of two public officials authorized to make emergency decisions regarding the child and the telephone numbers where each of them may be reached on a 24-hour basis. This information must be furnished at the time of admission.

Historical Note

Sec. filed Nov. 29, 1974 eff. Nov. 26, 1974.

174.6 Duration of stay. No child shall be detained in excess of a continuous stay of 30 days without prior approval of the director of the facility. A written report of the factors requiring such stay of more than 30 days shall be submitted to the director of the facility, who may grant two extension periods of one week each. A separate written report justifying the second extension must be submitted to the director of the facility prior to his approval for that week.

Historical Note

Sec. filed Nov. 29, 1974 eff. Nov. 26, 1974.

174.7 Reimbursement to the division. Expenditures made by the Division for Youth for the care, maintenance and supervision of children in a regional secure

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detention facility who are local charges within the meaning ascribed to such term by the Social Services Law shall be subject to reimbursement to the State by the social services district from which the youth was referred, at the rate of 50 per cent of the per diem amount expended by the division to provide care, maintenance and supervision in the secure detention facility. The Division for Youth, subject to the approval of the director of the budget and certification to the chairmen of the senate finance and assembly ways and means committees, shall annually compute and determine the per diem rate, and shall assess the social services district on such forms and in such manner as it may deem appropriate. Billing shall be discontinued on the day following a runaway when a child is not returned within 24 hours. If a runaway child from a Division for Youth facility is apprehended pursuant to a Division for Youth warrant, the aforesaid reimbursement to the division shall be made by the social services district which originally placed the child with the division.

Historical Note

Sec. filed Nov. 29, 1974 eff. Nov. 26, 1974.

174.8 Transportation of children to and from a regional secure detention facility. Peace officers of the county from which a child was referred shall act as agent of a facility in transporting the child in order to comply with section 726 of the Family Court Act and shall further be responsible for transporting a child to and from a facility: for all court appearances; for all appointments with the child's legal counsel; for clinical or medical treatment; for placement contacts; for dispositional transfer; and, for related matters which require transportation. The county agency responsible for administering detention may authorize other agencies to assume the above transportation responsibilities of a peace officer. The Division for Youth will transport children to and from a facility for medical emergencies.

Historical Note

Sec. filed Nov. 29, 1974 eff. Nov. 26, 1974.

174.9 Responsibility for runaways. The Division for Youth accepts no responsibility for the return of runaways, except the immediate notification to the appropriate Family Court or to the law enforcement agency which made the peace officer referral, to the family of the runaway, when possible, and to State and local police when, in the discretion of the Division for Youth, such notice is appropriate.

Historical Note

Sec. filed Nov. 29, 1974 eff. Nov. 26, 1974.

174.10 Medical costs. The social services district from which the child was referred shall be responsible for all medical costs incurred for the child beyond ordinary emergency procedures and ordinary prophylactic medical care.

Historical Note

Sec. filed Nov. 29, 1974 eff. Nov. 26, 1974.

174.11 Contact with the child. The Family Court or law enforcement agency referring the child shall assure continuing contact with the child, at least weekly, and shall comply with requests for visitation with the child by such persons as the director of the facility deems appropriate.

Historical Note

Sec. filed Nov. 29, 1974 eff. Nov. 26, 1974.

174.12 Removal of child after acceptance. The Division for Youth reserves the right to terminate care of a child, when, in the discretion of the director of a secure detention facility, the facility services and program are inappropriate for the child because of the child's mental, emotional or physical condition. The division

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shall give notice of the termination of care to the Family Court or law enforcement agency which made the referral. Such court or agency shall remove the child within 48 hours after notice is given. Failure of the court or agency to comply with removal shall constitute authority to the division to return the child to the referring court or agency or to release the child to the appropriate social services district from which such child was referred.

Historical Note

Sec. filed Nov. 29, 1974 eff. Nov. 28, 1974.

174.13 Noncompliance with regulations. Failure to comply with any of the provisions of this Part may result in the removal of a child pursuant to the procedure outlined above in section 174.12 of this Part.

Historical Note

Sec. filed Nov. 29, 1974 eff. Nov. 28, 1974.

174.14 Enforcement. This Part shall be strictly enforced. However, if the director of a facility determines that strict compliance with this Part will result in undue hardship, and that there is substantial compliance with these regulations, he may waive strict compliance thereto by a written consent, which shall state the reasons for the waiver.

Historical Note

Sec. filed Nov. 29, 1974 eff. Nov. 28, 1974.

PART 175

TRANSFERS

(Statutory authority: Executive Law, art. 19-G, § 511)

Sec.

175.1 Guidelines for transfer
175.2 Procedures for transfer
175.3 Emergency transfer requests

Sec.

175.4 The transfer board: function, members and operating procedures

Historical Note

Part (§§ 175.1-175.4) filed Nov. 29, 1974
eff. Nov. 29, 1974.

Section 175.1 Guidelines for transfer. A child shall only be considered for transfer from a school or center under the jurisdiction of the Division for Youth, pursuant to title III of article 19-G of the Executive Law, to the Goshen Center, the Brookwood Center or the Brentwood Center (hereinafter referred to as secure centers) when:

(a) The child constitutes a serious and evident danger to himself and to others to such an extent that his health and safety cannot be secured in an open program and the secure center is the only alternative.

(b) The child cannot be treated or rehabilitated in an open setting under the following circumstances:

(1) The treatment resources of the open school are inadequate for that particular child and the secure center is the only alternative.

(2) The child is aggressive and has established a pattern of absconding, which, together with other problems with which the school cannot adequately cope, has rendered that youngster unreceptive and unavailable for treatment. Weak, passive children who abscond should be considered for transfer to other open programs, if necessary.

Historical Note

Sec. filed Nov. 29, 1974 eff. Nov. 29, 1974.

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175.2 Procedures for transfer. (a) A statement shall be obtained from the child relative to the incident(s) relating to the transfer request or one describing his overall adjustment in the program, where one major incident is not the primary adjustment problem. Such a statement shall be obtained by the child's social worker under circumstances which would not prejudice the child's account. If the child cannot write well, the social worker should take down the child's version in his own words, read it back to him, and have the child sign it or verify it in some other way. The child shall be appropriately informed of the decision to request transfer and the reasons for such request prior to transfer.

(b) The school or center requesting the transfer shall prepare and provide the following:

(1) A request for transfer summary based on guidelines designated by the division.

(2) A completed order of transfer ready for the signature of the director of the Division for Youth, if approved.

(3) The child's statement.

(4) Other information and documents as may be deemed pertinent in support of transfer.

(c) The above material should be sent to the attention of the chairman of the transfer board, with a copy to the receiving school, and to the C.S.B. worker assigned to the child.

(d) The transfer board shall review the request in accordance with its operating procedure as outlined above.

(e) The chairman of the board shall notify the requesting school and the receiving school of the decision within seven days of receiving the request as indicated in section 175.2, "Procedures for Transfer", above.

Historical Note

Sec. filed Nov. 29, 1974 eff. Nov. 29, 1974.

175.3 Emergency transfer requests. Emergency transfer requests may be initiated by telephone and can be acted on by the chairman of the board or his designee, if in his judgment, the situation warrants it and the board cannot be convened in sufficient time to decide the matter. The term *emergency* for these purposes, is defined as a situation in which the health or safety of the youth and/or staff are involved by virtue of the unpredictable and uncontrollable behavior of the youth and for such reasons the youth must be immediately removed from the facility. Running away shall not in itself constitute an emergency situation. However, the board will be convened as soon as possible in such circumstances and formally rule on the chairman's action. If the youngster has already been physically transferred and, after full discussion with the chairman and weighing of all pertinent facts, the board decides against transfer to the secure center, such youngster will be returned to the original school.

Historical Note

Sec. filed Nov. 29, 1974 eff. Nov. 29, 1974.

175.4 The transfer board: function, members and operating procedures. (a) *Function.* To review requests for transfer and to decide on the disposition of each such request.

(b) *Members.* The transfer board shall consist of five members as follows:

(1) A person designated by the director shall act [as] chairman. It will be the responsibility of the chairman to provide copies of the transfer material to each of the members; to gather additional information as needed; to arrange

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with the other members for a date and time of the review; to act as discussion leader; to submit recommendations for approval to the Director of the Division for Youth; to notify both the requesting school and the appropriate secure center of the board decision; to maintain records of proceedings.

(2) The liaison person of the requesting school and the liaison person of the receiving school.

(3) An attorney with the Division for Youth or his designee.

(4) A program supervisor, to be designated by the Director of the Division for Youth.

(c) *Operating procedures.* Three members of the board shall constitute a quorum. Decisions shall be reached by majority of those present at any regularly constituted meeting.

(1) If the request is approved by the board, the chairman shall submit the order of transfer with the transfer summary attached along with a memorandum stating the reasons for recommending approval and minority reports (if any) to the Director of the Division for Youth. The director of the division may overrule the decision of the board. Upon the approval of the director, the chairman shall initially notify the requesting school and the appropriate secure center by telephone and follow it with a written confirmation.

(2) If the request is denied by the board or overruled by the director, the chairman shall notify the requesting school by memorandum (with copy to the appropriate secure center) of the denial, the reasons for the denial and other recommendations, if any.

(3) Requesting schools or centers should be notified of decisions by the board within seven days of receiving the request.

Historical Note

Sec. filed Nov. 29, 1974 eff. Nov. 29, 1974.

PART 176

REIMBURSEMENT FOR INSTITUTIONAL CARE, AFTERCARE SUPERVISION, FOSTER CARE AND DETENTION

(Statutory authority: Executive Law, §§ 529, 530, art. 10-G)

Sec.		Sec.	
176.1	Expenditures for care and maintenance in voluntary child caring agencies	176.7	Expenditures for care and maintenance in Division for Youth facilities
176.2	Scope of care and maintenance	176.8	Establishment of per diem rates
176.3	Reimbursement of expenditures for care and maintenance	176.9	Scope of care and maintenance in Division for Youth facilities
176.4	Claims for State reimbursement for care and maintenance provided in voluntary child caring agencies	176.10	Charges for expenditures for care and maintenance in Division for Youth facilities
176.5	Repayments and refunds	176.11	Repayments and refunds for support of children in the division
176.6	Annual adjustment of per diem rates for care provided by voluntary child caring agencies	176.12	Reimbursement for detention expenditures

Historical Note

Part (§§ 176.1-176.12) filed May 16, 1975
eff. May 16, 1975.

Section 176.1 Expenditures for care and maintenance in voluntary child caring agencies. (a) Expenditures made by social services districts for care, maintenance and supervision furnished alleged and adjudicated juvenile delinquents and persons in need of supervision in facilities operated by authorized agencies in compliance with the rules of the State Board of Social Welfare, not including facilities

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of the division, and in public and private detention facilities and in certified boarding homes, pursuant to directions of the Family Court, shall be subject to reimbursement by the State, upon approval by the division and in accordance with its regulations, as follows:

(1) The full amount expended by the district for care, maintenance and supervision of State charges;

(2) 50 percent of the amount expended for the care, maintenance and supervision of local charges.

(b) Expenditures made by social services districts for aftercare supervision of adjudicated juvenile delinquents and persons in need of supervision provided prior to the expiration of the initial or extended period of placement by the aftercare staff of the facility from which the youth has been released or discharged, other than those under the jurisdiction of the Division for Youth, in which said youth was placed or committed, pursuant to directions of the Family Court, shall be subject to reimbursement by the State, upon approval by the division and in accordance with its regulations as follows:

(1) the full amount expended by the district for aftercare supervision of State charges;

(2) 50 percent of the amount expended by the district for aftercare supervision of local charges.

Historical Note

Sec. filed May 16, 1975 eff. May 16, 1975.

176.2 Scope of care and maintenance. (a) Care and maintenance may include clothing, food, shelter, medical care (in the facility or in the hospital), transportation for home visits, and other expenses for the child in care.

(b) Care and maintenance does not include transportation for a child for placement in an institution or for a preplacement interview.

(c) Care and maintenance is limited to residential care and does not include day treatment programs.

Historical Note

Sec. filed May 16, 1975 eff. May 16, 1975.

176.3 Reimbursement of expenditures for care and maintenance. (a) Reimbursement of expenditures for care of a child shall include per diem costs of absences for only those listed below:

(1) AWOLs—Division for Youth will reimburse for up to seven continuous AWOL days for any single episode;

(2) Weekend visits;

(3) School and religious holidays;

(4) Organized school trips;

(5) Legal detention—up to seven days;

(6) Visits to potential foster parents—up to seven days;

(7) Vacations home—up to seven continuous days.

(b) Reimbursement for care and maintenance includes the day of admission but not the day of discharge.

(c) Reimbursement for care and maintenance refers only to actual expenditures made by the social services district and does not include items encumbered but which have not yet been paid.

Historical Note

Sec. filed May 16, 1975 eff. May 16, 1975.

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176.4 Claims for State reimbursement for care and maintenance provided in voluntary child caring agencies.

(a) Submission.

(1) Claims for reimbursement for expenditures for care and maintenance of juvenile delinquents and persons in need of supervision shall be submitted by the social services districts making the expenditures in the first instance.

(2) All claims must be submitted in duplicate with original signatures, pursuant to instructions from the division.

(3) Each county must submit a claim every quarter.

(4) Claims must be received by the Division for Youth within one year of the period of service.

(b) Grouping claims by period of service.

(1) Claims must be grouped in quarters that correspond to the period of service.

(2) Quarters are broken down in the following manner:

(i) *First quarter.* January, February and March months of service

(ii) *Second quarter.* April, May and June months of service

(iii) *Third quarter.* July, August and September months of service

(iv) *Fourth quarter.* October, November, and December months of service

(c) All claims must be submitted in accordance with the procedures promulgated by the director of the Division for Youth.

(d) Division for Youth will notify counties of any items that are deleted from their claims, with explanation.

Historical Note

Sec. filed May 16, 1975 eff. May 16, 1975.

176.5 Repayments and refunds. (a) When a social services district receives a payment pursuant to a court order for the support of a juvenile delinquent or a person in need of supervision from the child's parents or other person liable for his support, the district shall record and report the amount collected when claiming reimbursement in accordance with division procedures.

(b) When a social services district receives an amount from any other source as an offset to expenditures made for care of a delinquent child or a person in need of supervision, the district shall record and report the amount collected in accordance with division procedures.

Historical Note

Sec. filed May 16, 1975 eff. May 16, 1975.

176.6 Annual adjustment of per diem rates for care provided by voluntary child caring agencies. (a) In computing reimbursement to the social services district pursuant to this section, the division shall ensure that the aggregate of State aid under all State aid formulas shall not exceed 50 percent of the cost of care, maintenance and supervision, exclusive of Federal aid for such purposes.

(b) Each authorized agency shall provide the division with financial information necessary to calculate per diem rates as may be required by the division. Such information shall specifically include amounts received or to be received under other State or Federal aid programs.

(c) The Division for Youth will compute the per diem reimbursable rates once

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annually and will apply the adjustment to the first quarter claim for the following year.

Historical Note

Sec. filed May 16, 1975 eff. May 16, 1975.

176.7 Expenditures for care and maintenance in Division for Youth facilities.

(a) Expenditures made by the Division for Youth for care, maintenance and supervision furnished youth, including alleged and adjudicated juvenile delinquents and persons in need of supervision, placed in or referred to, the division's schools, centers, forestry camps and short-term adolescent training programs, shall be subject to reimbursement to the State by the social services district from which the youth was placed as follows: 50 percent of the amount expended for care, maintenance and supervision of local charges.

(b) Expenditures made by the Division for Youth for aftercare supervision shall be subject to reimbursement to the State by the social services district from which the youth was placed, in accordance with regulations of the division, as follows: 50 percent of the amount expended for aftercare supervision of local charges.

Historical Note

Sec. filed May 16, 1975 eff. May 16, 1975.

176.8 Establishment of per diem rates. Separate per diem rates shall be computed, as provided below for all of the following categories of care: institutional care in division facilities; foster family boarding home care provided by the division; aftercare supervision provided by the division.

(a) The director of the Division for Youth, subject to the approval of the Director of the Budget and certification to the chairpersons of the Senate finance and Assembly ways and means committees, shall annually compute and determine per diem rates for each category of care provided by the division, according to a cost allocation plan based upon the services actually provided in the preceding calendar year.

(b) The director of the Division for Youth, subject to the approval of the Director of the Budget and certification to the chairpersons of the Senate finance and Assembly ways and means committees, may establish a single per diem rate for all division facilities or may establish separate rates as may be appropriate to reflect the differentials in cost of specific division programs.

Historical Note

Sec. filed May 16, 1975 eff. May 16, 1975.

176.9 Scope of care and maintenance in Division for Youth facilities. Care and maintenance includes clothing, food, shelter, and medical care (in the facility or in the hospital).

Historical Note

Sec. filed May 16, 1975 eff. May 16, 1975.

176.10 Charges for expenditures for care and maintenance in Division for Youth facilities. (a) The Division for youth will bill local districts for all days of care while a child is in a division facility or program, from and including the day of admission up to but excluding the day of discharge.

(b) Bills for care of a child shall include per diem costs of absences for those listed below:

(1) AWOLS—Division for Youth will bill for up to seven continuous AWOL days (inclusive of day of departure) for any single episode;

(2) Weekend visits;

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- (3) School and religious holidays;
- (4) Organized school trips;
- (5) Legal detention—up to seven days (inclusive of day of departure);
- (6) Visits to potential foster parents—up to seven days (inclusive of day of departure);
- (7) Vacations home—up to seven continuous days (inclusive of day of departure);
- (8) Admissions to hospitals for medical care—for the entire period of absence (unless the cost of hospital care is paid by sources other than Division for Youth).

Historical Note

Sec. filed May 16, 1975 eff. May 16, 1975.

176.11 Repayments and refunds for support of children in the division.

(a) If a social services district receives a payment for the support of a child in a division facility, then the amount shall be divided between the local district and the State in the same proportion as the costs have been divided.

(b) The district shall record and report the amount collected and submit the State's share to the division, in accordance with Division for Youth procedures.

Historical Note

Sec. filed May 16, 1975 eff. May 16, 1975.

176.12 Reimbursement for detention expenditures. (a) No reimbursement will be paid for those days in excess of 45 for children kept in detention, both secure and nonsecure, without authorization of the Division for Youth.

(b) No reimbursement will be paid for children placed in secure or nonsecure detention facilities which have not been approved by the Division for Youth.

Historical Note

Sec. filed May 16, 1975 eff. May 16, 1975.

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