

EXECUTIVE ORDERS

Executive Order No. 149: Expediting the Foil Process.

WHEREAS, we seek to further transparency and openness in New York State government; and

WHEREAS, the purpose of the Freedom of Information Law (FOIL) is, and has always been, to foster an open and transparent government that all New Yorkers can hold proud; and

WHEREAS, I received two bills pertaining to FOIL from the Legislature; and

WHEREAS, while their goals were well-intended, these bills are seriously flawed and would radically transform the litigation process, are myopic in their scope and focus only on one branch of government, and would only serve to perpetuate a fractured system of transparency and data production by intentionally excluding other branches of government; and

WHEREAS, Assembly Bill 114 has significant technical issues in that it: would substantially alter the balance of appellate rights between state agencies and non-state agency requestors, in that the condensed timeframe would only apply when a state agency appeals an adverse decision, which is necessarily an inequitable outcome, conversely, a non-state agency party would continue to have the longer time periods for appeal that are currently allowed by law; would eliminate judicial discretion regarding the time available to perfect an appeal as permitted by Civil Procedure Law and Rules § 5530(c), which allows each department of the appellate divisions to set their own rules governing the time to perfect an appeal, and/or when an appeal is subject to dismissal for failure to prosecute and/or deemed abandoned; fails to provide for an extension of the 60-day timeframe, even on consent; puts a substantial burden on state agencies to perfect their appeals and may make it difficult for agencies to serve and file appellate records and briefs, possibly compromising a state agency's due process rights; and

WHEREAS, Assembly Bill 1438-B also has significant technical issues in that it: would allow for attorney's fees to be assessed solely against a state agency, rather than uniformly against both parties; would also allow for attorney's fees to be assessed against a state agency, even if the state agency ultimately prevails; would require a trial court to assess attorney's fees against an agency when an agency denies access to FOIL requests in "material violation" of FOIL and with no reasonable basis for denying such access; fails to define what a "material violation" is, allowing each court to define the scope of the term, and leaving litigants without any clarity; and

WHEREAS, these bills fail to include the legislature in any meaningful FOIL reform; and

WHEREAS, I vetoed Assembly Bill 114 and Assembly Bill 1438-B for the reasons set forth above; and

WHEREAS, the Executive has and will continue to lead by example in advancing transparency and efficiency in government and, consistent with that principle, will immediately direct state agencies to fast track FOIL appeals, and will introduce legislation that will encompass these issues, address the described flaws, and execute more comprehensive FOIL reform that will cover all branches of state government.

NOW, THEREFORE, I, ANDREW M. CUOMO, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York, do hereby find that, in light of recent events, we must do more to immediately advance transparency in government. Therefore, pursuant to the authority vested in me by the Constitution of the State of New York and Section

28 of Article 2-B of the Executive Law, I hereby direct all state agencies to adhere to the spirit of Assembly Bill 114, and move post-haste in filing a notice of appeal, settling the record on appeal, and filing a brief, within 60 days, absent extremely complex matters or extraordinary circumstances outside agency control; and

FURTHER, this Order shall take effect immediately and shall remain in effect until further notice.

(L.S.)

GIVEN under my hand and the Privy Seal of the State in the City of Albany this twelfth day of December in the year two thousand fifteen.

BY THE GOVERNOR

/S/ Andrew M. Cuomo

/s/ William J. Mulrow

Secretary to the Governor

Executive Order No. 150: Establishing One or More Correctional Facilities Within the Department of Corrections and Community Supervision Exclusively for Youth.

WHEREAS, the State of New York is one of only two states that, by statute, automatically processes all 16 and 17 year old youth in the adult criminal justice system for all offenses; and

WHEREAS, approximately one hundred (100) youth are incarcerated in New York State adult prison facilities and approximately five hundred fifty (550) youth are currently confined in local jails. Youth of color are disproportionately affected and consist of eighty-two (82) percent of those sentenced to adult confinement; and

WHEREAS, it is well-established that incarcerating youth in adult prisons has significant negative impacts on this population, including, but not limited to, higher rates of suicide and recidivism. Research has shown that youth processed as adults have a twenty-six (26) percent higher likelihood of re-incarceration than youth processed as juveniles; and

WHEREAS, despite rigorous efforts made to pass Raise the Age legislation that would have, among other things, ensured that incarcerated youth receive services and have an opportunity to address the collateral consequences of a conviction, the Legislature was unable to come to an agreement, which has necessitated that I pursue an interim measure pending the passage of a bill that either raises the age of criminal responsibility or undertakes the critical reforms outlined by the Commission on Youth, Public Safety and Justice and my proposed bill; and

WHEREAS, in the interest of promoting public safety and justice, the State of New York is committed to implementing policies that promote improved outcomes for court-involved youth, and to taking steps to remove currently incarcerated youth, and divert those who will be convicted under existing law from adult prisons, and to providing the necessary programs and services to assist in reducing the rates of recidivism of youth; and

WHEREAS, pursuant to section 112 of Correction Law, the Commissioner of the New York State Department of Corrections and Community Supervision (DOCCS) is authorized to manage, maintain, and control the State's correctional facilities, the inmates confined therein, and all matters relating to the government, discipline, policing, contracts, and fiscal concerns thereof; and

WHEREAS, pursuant to subdivision 2 of section 70 of the Correction Law, DOCCS may establish or maintain any type of institution or program of treatment, not inconsistent with any other provisions of law; and

WHEREAS, pursuant to subdivision 3 of section 70 of the Correction Law, the Commissioner of DOCCS may establish and maintain new correctional facilities, in accordance with the needs of the Department; and

WHEREAS, pursuant to subdivision 8 of section 70 of the Correction Law, the Commissioner of DOCCS is authorized to enter into contracts, within the amount appropriated therefore, with any university, social agency, or qualified person to render professional services to any correctional facility; and

WHEREAS, pursuant to section 501 of the Executive Law, the New York State Office of Children and Family Services (OCFS) is duly authorized to establish, operate and maintain, or contract for the operation and maintenance of programs to advance the moral, physical, mental, and social well-being of the youth of this state; and

WHEREAS, it is the core function of OCFS to provide treatment programs and services to troubled youth, and 16 and 17 year old juvenile offenders, in particular; and

WHEREAS, DOCCS, in collaboration with OCFS, the Office Mental Health (OMH), and the Office of General Services (OGS), were directed to develop a plan to move the 16 and 17 year olds from adult prisons to a facility with necessary program supports and staff. The agencies have developed a plan, which identifies the facility for consideration, the requisite work and timeline required to ready the facility to house females and medium- and minimum-security classified male 16 and 17 year olds, provide the programmatic, staffing, and service needs for the facility, and the agencies are now ready to begin implementation of the plan;

NOW, THEREFORE, I, ANDREW M. CUOMO, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and laws of the State of New York, hereby order, as an interim measure pending the passage of Raise the Age legislation and the necessary reforms relating to the legislation, that the plan shall be implemented as follows:

1. The Commissioner of DOCCS has identified a facility for the purpose of confining female and medium- and minimum-security classified male youth separately from adult prisoners who are age 18 or older. The movement of the youth shall be conducted in phases to permit for retrofitting of the facility, with such movement beginning in August 2016; and

2. Such facility shall be administered by DOCCS with programs and services to be provided with consultation and training support from OCFS. The facility should also include specially trained staff to serve youth; and

3. The Commissioner of OCFS shall, in conjunction with the Commissioner of DOCCS and any other state agency with respect to necessary services, facilitate the specialized training of DOCCS staff, review DOCCS policies and procedures for this youth population, and provide consultation on difficult cases. OCFS clinical staff and case managers shall participate in conference calls, video conferences, site visits, shared training sessions and case consultations, to assist DOCCS in addressing the specialized needs of the youth in such facility or facilities. Ultimately, DOCCS and OCFS shall enter into a Memorandum of Understanding regarding those services and programs; and

4. The Commissioner of OMH shall assign staff to such facility on a full time basis sufficient to meet the requirements of a "level one facility" as defined in subdivision 27 of section 2 of the Correction Law; and

5. In accordance with section 504 of the Correction Law, the Commissioner of DOCCS may consider a request from a local correctional facility to house any youth who has received a definite sentence of imprisonment in excess of 90 days in such facility.

FURTHER, this Order shall take effect immediately and shall remain in effect until further notice.

(L.S.)

GIVEN under my hand and the Privy Seal of the State in the City of Albany this twenty-second day of December in the year two thousand fifteen.

BY THE GOVERNOR

/S/ Andrew M. Cuomo

/s/ William J. Mulrow

Secretary to the Governor