

Regulatory Impact Statement (RIS):

The New York State Commission of Correction ("Commission") seeks to add Parts 7301, 7302, 7305, 7306, 7308, 7309, 7310, 7311, 7312, 7313, 7320, 7322, 7326, 7328, 7331, 7332, 7334, 7336, 7342, 7346, 7350, 7352, 7354, 7356 and 7360 of Title 9 NYCRR.

1.) Statutory authority:

Subdivision (6) of section 45 of the Correction Law authorizes the Commission to promulgate rules and regulations establishing minimum standards for the care, custody, correction, treatment, supervision, discipline, and other correctional programs for all person confined in the correctional facilities of New York State.

Subdivision (15) of section 45 of the Correction Law allows the Commission to adopt, amend or rescind such rules and regulations as may be necessary or convenient to the performance of its functions, powers and duties.

County Law section 218-a(6) and Correction Law section 500-p require specialized secure detention facilities for older youth to be regulated and certified by the Office of Children and Family Services (OCFS) in conjunction with the Commission.

2.) Legislative objectives:

Enactment of "Raise the Age" legislation (RTA) was an initiative of Governor Andrew Cuomo for several years, as New York was one of only two States left that still considered all 16 and 17-year-olds automatically criminally responsible. Consistent with adolescent developmental needs and the Prison Rape Elimination Act (PREA), the RTA recognizes the potential vulnerability and treatment needs of younger persons who will remain criminally responsible for their actions. Thus, such persons are required to be housed in discrete local facilities (i.e. specialized secure detention facilities) that are not jails, pending adjudication and for short

sentences, and in specially designated facilities operated by the Department of Corrections and Community Supervision for longer sentences. This proposed rule outlines requirements under the RTA for specialized secure detention facilities for older adolescents. By including specialized secure detention facilities for older youth within the Correction Law section 40(2) definition of “local correctional facility,” the Legislature intended the Commission to promulgate regulations for the construction, renovation and certification of such facilities.

3.) Needs and Benefits:

The proposed rule is needed to fulfill the statutory mandates of the RTA. As noted in the “Summary of the Proposed Rule,” the RTA is a necessary change to New York State’s laws to address how youth are processed through the criminal and juvenile justice systems. By including specialized secure detention facilities for older youth within the Correction Law section 40(2) definition of “local correctional facility,” the Commission is bound by Correction Law section 45(6) to promulgate rules and regulations establishing minimum standards for the care, custody, correction, treatment and supervision of the youth confined therein. As proposed, the Commission affirms that the regulations will serve to ensure that specialized secure detention facilities for older youth are managed in a safe, stable and humane manner, with operations and incidents sufficiently documented to allow for sufficient oversight by the Commission and OCFS.

4.) Costs:

Initial cost outlay by county governments is necessary to implement the requirements of the RTA. However, the RTA adds a new section 54-m to the State Finance Law which provides that qualifying counties are eligible for reimbursement of one hundred percent of the costs associated with implementation of the RTA. Those counties that would not automatically qualify are those that have enacted a budget that is subject to the

provisions of General Municipal Law section 73(c) that has exceeded the limits of that law, or counties that are not subject to General Municipal Law section 73(c). Regardless, such counties may qualify for such state aid with a hardship waiver. Additionally, section 104-a of Part WWW of Chapter 59 provides that funding shall be available for one hundred percent of a county's costs associated with the transport of youth by the sheriff that would not otherwise have occurred absent the provisions of chapter 59 of the laws of 2017. The State has appropriated \$19 million to finance local detention costs and renovation.

With respect to overall costs, it should be noted that these same youth have been held in local jails, at county expense, and have been maintained separately from older inmates due to the requirements of Correction Law and Commission regulations. Thus, some expenses currently exist. In addition, in the event a county does not qualify for one hundred percent reimbursement under the RTA, reimbursement of the costs for new construction or substantial remodeling currently available for other juvenile detention facilities will be available for the same specialized secure detention outlays.

5.) Local government mandates:

Counties must meet the deadlines established in the RTA to house 16-year-old adolescent offenders in specialized secure juvenile detention facilities beginning October 1, 2018, and 17-year-olds beginning October 1, 2019.

In addition, New York City must transfer all 16 and 17-year-olds currently held at Rikers Island to a specialized secure juvenile detention facility established for that purpose by October 1, 2018. The counties will have opportunities to work jointly to create regional facilities that may reduce the workload of a single county administering and operating a specialized secure detention facility. Counties may also engage an authorized child caring agency to operate specialized secure juvenile detention facilities.

6.) Paperwork:

A county will need to obtain certification of the specialized secure juvenile detention facility every two years. There will also be paperwork associated with tracking costs and claiming reimbursement. Additionally, there will continue to be records retention requirements for the youth and reporting requirements related to incidents.

7.) Duplication:

There should be no duplication of effort, as this is a single population that is being removed from the adult system to the juvenile system. This proposed rule does not duplicate other state or federal requirements.

8.) Alternatives:

There were no significant alternative proposals to this rule, as the RTA mandates creation of specialized secure juvenile detention facilities and the proposal is consistent with the RTA's direction and prevailing standards.

9.) Federal standards:

This proposed rule is consistent with federal standards.

10.) Compliance schedule:

Specialized secure detention facilities must be available to house 16 year-old youth who are alleged to have committed felonies on or after October 1, 2018 and 17 year-old youth by October 1, 2019. In addition, Correction Law section 500-p mandates that all 16 and 17-year-old youth who are currently housed at Rikers Island must be moved to a specialized juvenile detention facility for that purpose by October 1, 2018.