

Finding of Necessity:

On April 10, 2017, Governor Cuomo signed into law what is commonly known as “Raise the Age” legislation (Part WWW of Chapter 59 of the Laws of 2017), which generally serves to prohibit the detention of 16 and 17 year olds in adult jails and prisons, makes substantive changes to the procedures and mechanisms used to process 16 and 17 year old offenders in the criminal and youth justice systems, and allows for additional services for youth and alters the types of detention and/or placement they may receive.

Specifically, the legislation creates a new category of offender, known as an “adolescent offender,” defined as a person 16 years old (effective October 1, 2018) or 17 years old (effective October 1, 2019) at the time such person is alleged to have committed a felony offense. While an adolescent offender’s case is adjudicated in the Youth Part Court, he or she may be detained in the newly-created specialized secure juvenile detention facilities for older youth (SSDs). Per County Law §218-a(6), not every county will be required to operate a SSD, but all must have one available for use when necessary. In New York City, each SSD shall be operated by the Administration for Children’s Services in conjunction with the Department of Corrections. All SSDs statewide are required to be certified and regulated by OCFS in conjunction with the Commission. Additionally, SSDs were included in the Correction Law §40(2) definition of “local correctional facility,” necessitating that the Commission promulgate minimum standard regulations for such facilities pursuant to Correction Law §45(6), and approve or reject plans and specifications for their construction or improvement pursuant to Correction Law §45(10).

The legislation requires New York City to remove all 16 and 17 year old inmates from correctional facilities on Rikers Island and place them in SSDs by April 1, 2018 to the extent practicable, but in no event after October 1, 2018. For the remainder of the State, SSDs must be established, certified and operational before the legislation goes into effect for 16 year old adolescent offenders on October 1, 2018. As of the date of this

Notice, the City of New York and numerous counties are already well underway in developing plans to establish such facilities by the statutory deadline. Consequently, the proposed rulemaking is immediately necessary to provide counties and the City of New York the means by which to obtain Commission approval for facility construction and renovation, as well as to apply for Commission certification.

For the aforementioned reasons, SCOC finds that the immediate adoption of the rule is necessary for the preservation of the public health, safety and general welfare, and that compliance with the rule making procedures set forth in State Administrative Procedure Act section 202(1) would be contrary to the public interest. By immediately adopting these regulations, SCOC will be able to receive and approve plans for facility construction and renovation, as well as allow for agencies to apply for certification. Given the upcoming statutory deadline for the establishment for such facilities, the emergency adoption is needed to allow counties and the City of New York to continue in their progress without delay. Thus, SCOC finds that the regulation must be adopted and implemented immediately on an emergency basis, and compliance with the minimum periods of notice, public comment and other requirements of State Administrative Procedure Act section 202(1) would be contrary to the public interest.