S T A T E O F N E W Y O R K

4050--A

Cal. No. 300

2011-2012 Regular Sessions

I N S E N A T E

March 15, 2011

Introduced by Sen. GALLIVAN -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the family court act, in relation to warrants and orders of protection in persons in need of supervision cases

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivisions (g) and (h) of section 735 of the family court act, as added by section 7 of part E of chapter 57 of the laws of 2005, are amended to read as follows:

(g) (i) The designated lead agency shall promptly give written notice to the potential petitioner whenever attempts to prevent the filing of a petition have terminated, and shall indicate in such notice whether efforts were successful. The notice shall also detail the diligent attempts made to divert the case if a determination has been made that there is no substantial likelihood that the youth will benefit from further attempts. No persons in need of supervision petition may be filed pursuant to this article during the period the designated lead agency is providing diversion services. A finding by the designated lead agency that the case has been successfully diverted shall constitute presumptive evidence that the underlying allegations have been successfully resolved in any petition based upon the same factual allegations. No petition may be filed pursuant to this article by the parent or other person legally responsible for the youth where diversion services have been terminated because of the failure of the parent or other person legally responsible for the youth to consent to or actively participate.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(ii) [The] EXCEPT AS PROVIDED IN PARAGRAPH (III) OF THIS SUBDIVISION, THE clerk of the court shall accept a petition for filing only if it has attached thereto the following NOTICES:

(A) if the potential petitioner is the parent or other person legally responsible for the youth, a notice from the designated lead agency indicating there is no bar to the filing of the petition as the potential petitioner consented to and actively participated in diversion services; and

(B) a notice from the designated lead agency stating that it has terminated diversion services because it has determined that there is no substantial likelihood that the youth and his or her family will benefit from further attempts, and that the case has not been successfully diverted.

(III) THE CLERK OF THE COURT SHALL ACCEPT A PETITION FOR FILING IF:

(A) THE POTENTIAL PETITIONER IS REQUESTING THAT THE COURT ISSUE A WARRANT PURSUANT TO SECTION SEVEN HUNDRED THIRTY-EIGHT OF THIS ARTICLE, BECAUSE THE RESPONDENT HAS ABSCONDED FROM THE HOME AND IS UNABLE TO BE LOCATED; OR

(B) THE POTENTIAL PETITIONER IS REQUESTING THAT THE COURT ISSUE A TEMPORARY ORDER OF PROTECTION, PURSUANT TO SECTION SEVEN HUNDRED FORTY OF THIS ARTICLE, BECAUSE THE RESPONDENT POSES AN IMMINENT RISK OF HARM TO THE POTENTIAL PETITIONER OR MEMBER OF HIS OR HER HOUSEHOLD.

(h) No statement made to the designated lead agency or to any agency or organization to which the potential respondent HAS BEEN REFERRED, prior to the filing of the petition, or if the petition has been filed, prior to the time the respondent has been notified that attempts at diversion will not be made or have been terminated, or prior to the commencement of a fact-finding hearing if attempts at diversion have not terminated previously, may be admitted into evidence at a fact-finding hearing or, if the proceeding is transferred to a criminal court, at any time prior to a conviction.

S 2. Subdivision (b) of section 742 of the family court act, as amended by section 9 of part E of chapter 57 of the laws of 2005, is amended to read as follows:

(b) At the initial appearance of the respondent, the court shall review any termination of diversion services pursuant to such section, and the documentation of diligent attempts to provide appropriate services and determine whether such efforts or services provided are sufficient [and]. THE COURT may, AT ANY TIME, subject to the provisions of section seven hundred forty-eight of this article, order that additional diversion attempts be undertaken by the designated lead agency. The court may order the youth and the parent or other person legally responsible for the youth to participate in diversion services. AT THE INITIAL APPEARANCE OF THE RESPONDENT ON A PETITION FILED IN ACCORDANCE WITH SUBPARAGRAPH (A) OF PARAGRAPH (III) OF SUBDIVISION (G) OF SECTION SEVEN HUNDRED THIRTY-FIVE OF THIS ARTICLE, THE COURT SHALL REFER THE RESPONDENT AND PARENT TO THE DESIGNATED LEAD AGENCY FOR DIVERSION ATTEMPTS, UNLESS THE COURT DETERMINES THAT THERE IS A SUBSTANTIAL LIKELIHOOD THAT THE CHILD WOULD ABSCOND OR THERE IS NO SUBSTANTIAL LIKELIHOOD THAT THE YOUTH AND HIS OR HER FAMILY WOULD BENEFIT FROM DIVERSION ATTEMPTS. AT THE INITIAL APPEARANCE OF THE RESPONDENT ON A PETITION FILED IN ACCORDANCE WITH SUBPARAGRAPH (B) OF PARAGRAPH (III) OF SUBDIVISION (G) OF SECTION SEVEN HUNDRED THIRTY-FIVE OF THIS ARTICLE, THE COURT SHALL REFER THE RESPONDENT AND PARENT TO THE DESIGNATED LEAD AGENCY FOR DIVERSION ATTEMPTS, UNLESS THE COURT DETERMINES THAT THE CHILD CONTINUES TO POSE AN IMMINENT RISK TO THE PETITIONER OR A MEMBER OF HIS OR HER

HOUSEHOLD OR THAT THERE IS NO SUBSTANTIAL LIKELIHOOD THAT THE YOUTH OR HIS OR HER FAMILY WOULD BENEFIT FROM DIVERSION ATTEMPTS. If the designated lead agency thereafter determines that [the] A case REFERRED FOR DIVERSION EFFORTS UNDER THIS SECTION has been successfully resolved, it shall so notify the court, and the court shall dismiss the petition.

S 3. This act shall take effect on the ninetieth day after it shall have become a law.