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I N S E N A T E

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Introduced by Sens. MARTINS, BALL, BONACIC, BOYLE, CARLUCCI, FELDER, GALLIVAN, GOLDEN, GRIFFO, HANNON, LANZA, LARKIN, LITTLE, MARCELLINO, MARCHIONE, MAZIARZ, NOZZOLIO, O'MARA, RANZENHOFER, RITCHIE, ROBACH, SAVINO, SEWARD, VALESKY, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the family court act, in relation to involuntary treatment services for minors

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

1 Section 1. Subdivisions (a) and (i) of section 712 of the family court
2 act, subdivision (a) as amended by section 7 of part G of chapter 58 of
3 the laws of 2010 and subdivision (i) as added by section 1 of part E of
4 chapter 57 of the laws of 2005, are amended and three new subdivisions
5 (j), (k) and (l) are added to read as follows:
6 (a) "Person in need of supervision". A person less than eighteen years
7 of age who does not attend school in accordance with the provisions of
8 part one of article sixty-five of the education law or who is incorrigi-
9 ble, ungovernable or habitually disobedient and beyond the lawful
10 control of a parent or other person legally responsible for such child's
11 care, or other lawful authority, or who violates the provisions of
12 section 221.05 or 230.00 of the penal law, or HAS A SUBSTANCE USE DISOR-
13 DER, OR who appears to be a sexually exploited child as defined in para-
14 graph (a), (c) or (d) of subdivision one of section four hundred forty-
15 seven-a of the social services law, but only if the child consents to
16 the filing of a petition under this article.
17 (i) "Diversion services". Services provided to children and families
18 pursuant to section seven hundred thirty-five of this article for the
19 purpose of avoiding the need to file a petition or direct the detention
20 of the child. Diversion services shall include: efforts to adjust cases
21 pursuant to this article before a petition is filed, or by order of the
22 court, after the petition is filed but before fact-finding is commenced;
23 and preventive services provided in accordance with section four hundred
24 nine-a of the social services law to avert the placement of the child
25 into foster care, including crisis intervention and respite services.

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

1 DIVERSION SERVICES MAY ALSO INCLUDE, IN CASES WHERE ANY PERSON IS SEEK-
2 ING TO FILE A PETITION THAT ALLEGES THAT THE CHILD HAS A SUBSTANCE USE
3 DISORDER OR IS IN NEED OF IMMEDIATE TREATMENT DUE TO A SUBSTANCE USE
4 DISORDER, AN ASSESSMENT FOR SUBSTANCE USE DISORDER; PROVIDED, HOWEVER,
5 THAT NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE
6 DESIGNATED LEAD AGENCY SHALL NOT BE REQUIRED TO PAY FOR ALL OR ANY
7 PORTION OF THE COSTS OF SUCH ASSESSMENT OR SUBSTANCE USE DISORDER OR
8 DETOXIFICATION SERVICES, EXCEPT IN CASES WHERE MEDICAL ASSISTANCE FOR
9 NEEDY PERSONS MAY BE USED TO PAY FOR ALL OR ANY PORTION OF THE COSTS OF
10 SUCH ASSESSMENT OR SERVICES.

11 (J) "SUBSTANCE USE DISORDER". THE MISUSE OF, DEPENDENCE ON, OR
12 ADDICTION TO LEGAL OR ILLEGAL DRUGS LEADING TO EFFECTS THAT ARE DETRI-
13 MENTAL TO THE PERSON'S PHYSICAL AND MENTAL HEALTH OR THE WELFARE OF
14 OTHERS.

15 (K) "ASSESSMENT FOR SUBSTANCE USE DISORDER". ASSESSMENT BY A PROVIDER
16 THAT HAS BEEN CERTIFIED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE
17 SERVICES OF A PERSON LESS THAN EIGHTEEN YEARS OF AGE WHERE IT IS ALLEGED
18 THAT THE YOUTH IS SUFFERING FROM A SUBSTANCE USE DISORDER WHICH COULD
19 MAKE A YOUTH A DANGER TO HIMSELF OR HERSELF OR OTHERS.

20 (L) "SUBSTANCE ABUSE TREATMENT SERVICES". SUBSTANCE ABUSE TREATMENT
21 SERVICES SHALL INCLUDE PARTICIPATION IN AN AVAILABLE CHEMICAL DEPENDENCE
22 PROGRAM OR FACILITY ESTABLISHED IN ACCORDANCE WITH SECTIONS 19.09 AND
23 32.05 OF THE MENTAL HYGIENE LAW, AND ANY HOSPITAL AS DEFINED BY ARTICLE
24 TWENTY-EIGHT OF THE PUBLIC HEALTH LAW, THAT ADMITS PERSONS FOR SUBSTANCE
25 ABUSE TREATMENT.

26 S 2. Subdivision (b) of section 735 of the family court act, as added
27 by section 7 of part E of chapter 57 of the laws of 2005, is amended to
28 read as follows:

29 (b) The designated lead agency shall:

30 (i) confer with any person seeking to file a petition, the youth who
31 may be a potential respondent, his or her family, and other interested
32 persons, concerning the provision of diversion services before any peti-
33 tion may be filed; and

34 (ii) diligently attempt to prevent the filing of a petition under this
35 article or, after the petition is filed, to prevent the placement of the
36 youth into foster care; and

37 (iii) assess whether the youth would benefit from residential respite
38 services; and

39 (iv) determine whether alternatives to detention are appropriate to
40 avoid remand of the youth to detention; AND

41 (V) DETERMINE WHETHER AN ASSESSMENT OF THE YOUTH FOR SUBSTANCE USE
42 DISORDER BY AN OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES CERTI-
43 FIED PROVIDER IS NECESSARY WHEN A PERSON SEEKING TO FILE A PETITION
44 ALLEGES IN SUCH PETITION THAT THE YOUTH IS SUFFERING FROM A SUBSTANCE
45 USE DISORDER WHICH COULD MAKE THE YOUTH A DANGER TO HIMSELF OR HERSELF
46 OR OTHERS. PROVIDED, HOWEVER, THAT NOTWITHSTANDING ANY OTHER PROVISION
47 OF LAW TO THE CONTRARY, THE DESIGNATED LEAD AGENCY SHALL NOT BE REQUIRED
48 TO PAY FOR ALL OR ANY PORTION OF THE COSTS OF SUCH ASSESSMENT OR FOR ANY
49 SUBSTANCE USE DISORDER OR DETOXIFICATION SERVICES, EXCEPT IN CASES WHERE
50 MEDICAL ASSISTANCE FOR NEEDY PERSONS MAY BE USED TO PAY FOR ALL OR ANY
51 PORTION OF THE COSTS OF SUCH ASSESSMENT OR SERVICES. THE OFFICE OF ALCO-
52 HOLISM AND SUBSTANCE ABUSE SERVICES SHALL MAKE A LIST OF ITS CERTIFIED
53 PROVIDERS AVAILABLE TO THE DESIGNATED LEAD AGENCY.

54 S 3. Subdivision 3 of section 720 of the family court act, as amended
55 by section 9 of subpart B of part Q of chapter 58 of the laws of 2011,
56 is amended and a new subdivision 6 is added to read as follows:

1 3. Detention of a person alleged to be or adjudicated as a person in
2 need of supervision shall, except as provided in [subdivision] SUBDIVI-
3 SIONS four AND SIX of this section, be authorized only in a foster care
4 program certified by the office of children and family services, or a
5 certified or approved family boarding home, or a non-secure detention
6 facility certified by the office and in accordance with section seven
7 hundred thirty-nine of this article. The setting of the detention shall
8 take into account (a) the proximity to the community in which the person
9 alleged to be or adjudicated as a person in need of supervision lives
10 with such person's parents or to which such person will be discharged,
11 and (b) the existing educational setting of such person and the proximi-
12 ty of such setting to the location of the detention setting.

13 6. IF THE RESPONDENT IS ALLEGED TO BE OR ADJUDICATED AS A PERSON IN
14 NEED OF SUPERVISION DUE TO A SUBSTANCE USE DISORDER AS DEFINED BY SUBDI-
15 VISION (J) OF SECTION SEVEN HUNDRED TWELVE OF THIS ARTICLE, THE COURT
16 MAY DIRECT SUCH RESPONDENT TO ANY AVAILABLE SUBSTANCE ABUSE TREATMENT
17 SERVICE AS DEFINED BY SUBDIVISION (L) OF SECTION SEVEN HUNDRED TWELVE OF
18 THIS ARTICLE, PROVIDED, NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO
19 THE CONTRARY, THE COSTS ASSOCIATED WITH SUCH TREATMENT SHALL NOT BE THE
20 RESPONSIBILITY OF A LOCAL SOCIAL SERVICES DISTRICT, EXCEPT IN CASES
21 WHERE MEDICAL ASSISTANCE FOR NEEDY PERSONS MAY BE USED TO PAY FOR ALL OR
22 ANY PORTION OF THE COSTS OF SUCH ASSESSMENT OR SERVICES.

23 S 4. Paragraph (c) of subdivision 1 of section 754 of the family court
24 act, as amended by section 4 of part V of chapter 383 of the laws of
25 2001, is amended to read as follows:

26 (c) Continuing the proceeding and placing the respondent in accord
27 with section seven hundred fifty-six OF THIS PART; provided, however,
28 that the court shall not place the respondent in accord with section
29 seven hundred fifty-six OF THIS PART where the respondent is sixteen
30 years of age or older, unless the court determines and states in its
31 order that special circumstances exist to warrant such placement WHICH
32 COULD INCLUDE PLACEMENT IN SUBSTANCE ABUSE TREATMENT SERVICES AS DEFINED
33 BY SUBDIVISION (L) OF SECTION SEVEN HUNDRED TWELVE OF THIS ARTICLE; or

34 S 5. Subdivisions (a) and (b) of section 756 of the family court act,
35 subdivision (a) as amended by chapter 920 of the laws of 1982, paragraph
36 (i) of subdivision (a) as amended by chapter 309 of the laws of 1996,
37 the opening paragraph of paragraph (ii) of subdivision (a) as amended by
38 section 11 of part G of chapter 58 of the laws of 2010 and subdivision
39 (b) as amended by chapter 7 of the laws of 1999, are amended to read as
40 follows:

41 (a) (i) For purposes of section seven hundred fifty-four OF THIS PART,
42 the court may place the child in its own home or in the custody of a
43 suitable relative or other suitable private person or a commissioner of
44 social services OR IN A SUBSTANCE ABUSE TREATMENT SERVICES PROGRAM AS
45 DEFINED BY SUBDIVISION (L) OF SECTION SEVEN HUNDRED TWELVE OF THIS ARTI-
46 CLE, subject to the orders of the court.

47 (ii) Where the child is placed with the commissioner of the local
48 social services district, the court may direct the commissioner to place
49 the child with an authorized agency or class of authorized agencies,
50 including, if the court finds that the respondent is a sexually
51 exploited child as defined in subdivision one of section four hundred
52 forty-seven-a of the social services law, an available long-term safe
53 house. Unless the dispositional order provides otherwise, the court so
54 directing shall include one of the following alternatives to apply in
55 the event that the commissioner is unable to so place the child:

1 (1) the commissioner shall apply to the court for an order to stay,
2 modify, set aside, or vacate such directive pursuant to the provisions
3 of section seven hundred sixty-two or seven hundred sixty-three OF THIS
4 ARTICLE; or

5 (2) the commissioner shall return the child to the family court for a
6 new dispositional hearing and order.

7 (III) WHERE THE CHILD IS PLACED IN A SUBSTANCE ABUSE TREATMENT
8 SERVICES PROGRAM, THE COURT MAY ORDER THE CHILD TO UNDERGO TREATMENT FOR
9 A PERIOD NOT TO EXCEED SIXTY DAYS. IF THE COURT FINDS IT NECESSARY, IT
10 MAY DIRECT THE COUNTY SHERIFF TO TAKE THE CHILD INTO CUSTODY AND DELIVER
11 HIM OR HER TO THE SUBSTANCE ABUSE TREATMENT SERVICES SPECIFIED IN THE
12 COURT ORDER, OR TO THE NEAREST APPROPRIATE SUBSTANCE ABUSE TREATMENT
13 SERVICES PROGRAM FOR TREATMENT. THE COURT MAY EXTEND PLACEMENT BEYOND
14 SIXTY DAYS, PURSUANT TO SECTION SEVEN HUNDRED FIFTY-SIX-B OF THIS PART.

15 (b) Placements under this section may be for an initial period of
16 twelve months, EXCEPT WHEN PLACEMENT IS MADE PURSUANT TO PARAGRAPH (III)
17 OF SUBDIVISION (A) OF THIS SECTION. The court may extend a placement
18 pursuant to section seven hundred fifty-six-a OR SECTION SEVEN HUNDRED
19 FIFTY-SIX-B OF THIS PART. In its discretion, the court may recommend
20 restitution or require services for public good pursuant to section
21 seven hundred fifty-eight-a OF THIS PART in conjunction with an order of
22 placement. For the purposes of calculating the initial period of place-
23 ment, such placement shall be deemed to have commenced sixty days after
24 the date the child was removed from his or her home in accordance with
25 the provisions of this article. If the respondent has been in detention
26 pending disposition, the initial period of placement ordered under this
27 section shall be credited with and diminished by the amount of time
28 spent by the respondent in detention prior to the commencement of the
29 placement unless the court finds that all or part of such credit would
30 not serve the best interests of the respondent.

31 S 6. The family court act is amended by adding a new section 756-b to
32 read as follows:

33 S 756-B. EXTENSION OF PLACEMENT RELATED TO SUBSTANCE ABUSE TREATMENT
34 SERVICES. (A) WHENEVER A SUBSTANCE ABUSE TREATMENT SERVICES PROVIDER
35 BELIEVES THAT A CHILD WHO IS NEARING THE SCHEDULED DATE OF RELEASE FROM
36 TREATMENT SERVICES CONTINUES TO NEED SUCH SERVICES, A PETITION FOR AN
37 EXTENSION OF PLACEMENT MAY BE FILED AT LEAST TEN DAYS BEFORE THE EXPIRA-
38 TION OF THE COURT-ORDERED TREATMENT PERIOD. THE COURT SHALL IMMEDIATELY
39 SCHEDULE A HEARING TO BE HELD FIVE DAYS AFTER THE FILING OF THE PETI-
40 TION. THE COURT SHALL PROVIDE A COPY OF THE PETITION FOR EXTENSION OF
41 PLACEMENT AND THE NOTICE OF THE HEARING TO ALL PARTIES TO THE PROCEED-
42 ING.

43 (B) IF THE COURT FINDS THAT THE PETITION FOR AN EXTENSION OF PLACEMENT
44 SHOULD BE GRANTED, IT MAY ORDER THE CHILD TO UNDERGO SUBSTANCE ABUSE
45 TREATMENT SERVICES FOR A PERIOD NOT TO EXCEED AN ADDITIONAL NINETY DAYS.
46 WHEN THE CONDITIONS JUSTIFYING SUBSTANCE ABUSE TREATMENT SERVICES ARE NO
47 LONGER NECESSARY, THE CHILD MUST BE RELEASED TO THE CUSTODY OF HIS OR
48 HER PARENT OR OTHER PERSON LEGALLY RESPONSIBLE FOR HIS OR HER CARE.

49 (C) SUCCESSIVE EXTENSIONS OF PLACEMENT PURSUANT TO THIS SECTION MAY BE
50 GRANTED, BUT UNDER NO CIRCUMSTANCES SHALL SUCH EXTENSION BE CONTINUED
51 BEYOND THE CHILD'S EIGHTEENTH BIRTHDAY WITHOUT HIS OR HER CONSENT.

52 S 7. Section 764 of the family court act, as amended by chapter 920 of
53 the laws of 1982, is amended to read as follows:

54 S 764. Petition to terminate placement. Any parent or [guardian]
55 PERSON LEGALLY RESPONSIBLE FOR THE CHILD'S CARE or duly authorized agen-
56 cy [or next friend of a person placed under section seven hundred

fifty-six] may petition [to] the court for an order terminating the placement MADE PURSUANT TO SECTION SEVEN HUNDRED FIFTY-SIX OF THIS ARTICLE. The petition must be verified and must show:

(a) that an application for release of the respondent was made to the duly authorized agency OR THE SUBSTANCE ABUSE TREATMENT SERVICES PROVIDER with which the child was placed;

(b) that the application was denied or was not granted within thirty days from the day application was made; and

(c) the grounds for the petition.

S 8. Section 765 of the family court act is amended to read as follows:

S 765. Service of petition; answer. A copy of a petition under section seven hundred sixty-four OF THIS PART shall be served promptly upon the duly authorized agency or the institution having custody of the person OR THE SUBSTANCE ABUSE TREATMENT SERVICES PROVIDER, whose duty it is to file an answer to the petition within five days from the day of service.

S 9. Section 767 of the family court act, as amended by chapter 283 of the laws of 1977, is amended to read as follows:

S 767. Orders on hearing. (a) If the court determines after hearing that continued placement serves the purposes of this article, it shall deny the petition. The court may, on its own motion, reduce the duration of the placement, change the agency OR SUBSTANCE ABUSE TREATMENT SERVICES PROVIDER in which the child is placed, or direct the agency OR SUBSTANCE ABUSE TREATMENT SERVICES PROVIDER to make such other arrangements for the person's care and welfare as the facts of the case may require.

(b) If the court determines after hearing that continued placement does not serve the purposes of this article, the court shall discharge the person from the custody of the agency OR SUBSTANCE ABUSE TREATMENT SERVICES PROVIDER and may place the person on probation or under the supervision of the court, EXCEPT THAT IT SHALL NOT PLACE SUCH PERSON WHEN SUCH PERSON WAS PREVIOUSLY PLACED WITH A SUBSTANCE ABUSE TREATMENT SERVICES PROVIDER.

S 10. This act shall take effect on the ninetieth day after it shall have become law. Effective immediately, any rules or regulations necessary for the implementation of this act on its effective date may be promulgated prior to such effective date.