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

2406

2009-2010 Regular Sessions

I N A S S E M B L Y

January 15, 2009

Introduced by M. of A. GANTT -- read once and referred to the Committee on Children and Families

AN ACT to amend the family court act, in relation to probation, investigation and diagnostic assessment of juvenile delinquents or any other juvenile delinquent whom the court reasonably finds, on the record, to have a demonstrable need for a remediation of a discernible handicapping condition

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

Section 1. Subdivision 1 of section 351.1 of the family court act, as amended by chapter 398 of the laws of 1983, is amended to read as follows:

1. Following a determination that a respondent has committed a designated felony act OR ANY OTHER JUVENILE DELINQUENT WHOM THE COURT REASONABLY FINDS, ON THE RECORD, TO HAVE A DEMONSTRABLE NEED FOR A REMEDIATION OF A DISCERNIBLE HANDICAPPING CONDITION and prior to the dispositional hearing, the judge shall order a probation investigation and a diagnostic assessment. For the purposes of this article, the probation investigation shall include, but not be limited to, the history of the juvenile including previous conduct, the family situation, any previous psychological and psychiatric reports, school adjustment, previous social assistance provided by voluntary or public agencies and the response of the juvenile to such assistance. For the purposes of this article, the diagnostic assessment shall include, but not be limited to, psychological tests and psychiatric interviews to determine mental capacity and achievement, emotional stability and mental disabilities. It shall include a clinical assessment of the situational factors that may have contributed to the act or acts. When feasible, expert opinion shall be rendered as to the risk presented by the juvenile to others or himself, with a recommendation as to the need for a restrictive placement.

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

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S 2. Subdivision 3 of section 351.1 of the family court act, as added by chapter 920 of the laws of 1982, is amended to read as follows:

3. A child shall not be placed in accord with section 353.3 unless the court has ordered a probation investigation prior to the dispositional hearing; a child shall not be placed in accord with section 353.4 unless the court has ordered a diagnostic assessment prior to such hearing. THE DIAGNOSTIC ASSESSMENT SHALL BE COMPLETED BY AN INTERDISCIPLINARY TEAM CONSISTING OF, BUT NOT LIMITED TO, A PSYCHOLOGIST, A SOCIAL WORKER, A SPECIAL EDUCATOR, A PHYSICIAN, AND A LAW GUARDIAN AND/OR LEGAL COUNSEL.

S 3. Subdivisions 1 and 4 of section 353.4 of the family court act, subdivision 1 as amended by chapter 465 of the laws of 1992 and subdivision 4 as added by chapter 920 of the laws of 1982, are amended to read as follows:

1. If at the conclusion of the dispositional hearing and in accordance with section 352.2 the court finds that the respondent has a mental illness, mental retardation or developmental disability, as defined in section 1.03 of the mental hygiene law, which is likely to result in serious harm to himself or others, the court may issue an order placing such respondent with the [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES or, with the consent of the local commissioner, with a local commissioner of social services, OR THE COMMISSIONER OF MENTAL HEALTH OR THE COMMISSIONER OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES CONSISTENT WITH PLACEMENT PROVISIONS AS OUTLINED IN CHAPTER SEVEN HUNDRED FIFTY-SEVEN OF THE LAWS OF NINETEEN HUNDRED SEVENTY-SEVEN, CHAPTER FIVE HUNDRED SIXTY-THREE OF THE LAWS OF NINETEEN HUNDRED EIGHTY AND ARTICLE EIGHTY-ONE OF THE EDUCATION LAW, AND/OR ANY VOLUNTARY OR NOT-FOR-PROFIT AGENCY LICENSED UNDER THESE PROVISIONS OF LAW NOT INCONSISTENT WITH THE RULES AND REGULATIONS GOVERNING THE PLACEMENT OF CLIENTS. Any such order shall direct the temporary transfer for admission of the respondent to the custody of either the commissioner of mental health or the commissioner of mental retardation and developmental disabilities who shall arrange the admission of the respondent to the appropriate facility of the department of mental hygiene. The director of a hospital operated by the office of mental health may, subject to the provisions of section 9.51 of the mental hygiene law, transfer a person admitted to the hospital pursuant to this subdivision to a residential treatment facility for children and youth, as that term is defined in section 1.03 of the mental hygiene law, if care and treatment in such a facility would more appropriately meet the needs of the respondent. Persons temporarily transferred to such custody under this provision may be retained for care and treatment for a period of up to one year and whenever appropriate shall be transferred back to the [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES pursuant to the provisions of section five hundred nine of the executive law or transferred back to the local commissioner of social services. Within thirty days of such transfer back, application shall be made by the [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES or the local commissioner of social services to the placing court to conduct a further dispositional hearing at which the court may make any order authorized under section 352.2, except that the period of any further order of disposition shall take into account the period of placement hereunder. Likelihood to result in serious harm shall mean (a) substantial risk of physical harm to himself as manifested by threats or attempts at suicide or serious bodily harm or other conduct demonstrating he is dangerous to himself or (b) a substantial risk of physical harm to other persons as manifested by homicidal or other violent behav-

ior by which others are placed in reasonable fear of serious bodily harm.

4. No order of disposition placing the respondent in accordance with this section shall be entered except upon clear and convincing evidence which shall include the testimony of [two examining physicians as provided in section two hundred fifty-one] THE INTERDISCIPLINARY TEAM ESTABLISHED IN SUBDIVISION THREE OF SECTION 351.1 OF THIS PART.

S 4. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.