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

5270

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. MONTGOMERY -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the social services law, the family court act and the executive law, in relation to sexually exploited children

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

Section 1. Subdivisions 1, 4 and 5 of section 447-a of the social services law, as added by chapter 569 of the laws of 2008, are amended to read as follows:

1. The term "sexually exploited child" means any person under the age of eighteen who has been subject to sexual exploitation because he or she:

(a) is the victim of the crime of sex trafficking as defined in section 230.34 of the penal law;

(b) [is an abused child as defined in paragraph (iii) of subdivision (e) of section ten hundred twelve of the family court act;

(c)] engages in any act as defined in section 230.00 or 240.37 of the penal law;

[(d)] (C) is a victim of the crime of compelling prostitution as defined in section 230.33 of the penal law;

[(e)] (D) engages in acts or conduct described in article two hundred sixty-three of the penal law.

4. The term "safe house" means a residential facility operated by an authorized agency as defined in subdivision ten of section three hundred seventy-one of this article including a residential facility operating as part of an approved runaway program as defined in subdivision four of section five hundred thirty-two-a of the executive law or a not-for-profit agency with experience in providing services to sexually exploited youth and approved in accordance with the regulations of the office of children and family services that provides shelter for sexually exploited children. IN ADDITION, A LONG-TERM SAFE HOUSE MAY BE OPERATED

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

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BY A TRANSITIONAL INDEPENDENT LIVING SUPPORT PROGRAM AS DEFINED IN SUBDIVISION SIX OF SECTION FIVE HUNDRED THIRTY-TWO-A OF THE EXECUTIVE LAW. A safe house [created under this article] SERVING SEXUALLY EXPLOITED CHILDREN AS DEFINED IN THIS TITLE shall provide or assist in securing necessary services for such sexually exploited children either through direct provision of services, or through written agreements with other community and public agencies for the provision of services including but not limited to housing, assessment, case management, medical care, legal, mental health and substance and alcohol abuse services. Where appropriate such safe house in accordance with a service plan for such sexually exploited child may also provide counseling and therapeutic services, educational services including life skills services and planning services to successfully transition residents back to the community. [The safe house shall be available as a final disposition pursuant to section seven hundred fifty-six of the family court act to any sexually exploited child who is in need of long term housing.] Nothing in the provisions of this [article] TITLE OR ARTICLE NINETEEN-H OF THE EXECUTIVE LAW shall prevent a child who is the subject of a proceeding which has not reached final disposition from residing at the safe house for the duration of that proceeding nor shall it prevent any sexually exploited child who is not the subject of a proceeding from residing at the safe house. AN ADVOCATE EMPLOYED BY A SHORT-TERM SAFE HOUSE OR OTHER APPROPRIATE STAFF OF A SHORT-TERM SAFE HOUSE SHALL, TO THE MAXIMUM EXTENT POSSIBLE, PREFERABLY WITHIN TWENTY-FOUR HOURS BUT WITHIN NO MORE THAN SEVENTY-TWO HOURS FOLLOWING A SEXUALLY EXPLOITED CHILD'S ADMISSION INTO THE PROGRAM OTHER THAN PURSUANT TO A COURT ORDER, NOTIFY SUCH CHILD'S PARENT, GUARDIAN OR CUSTODIAN OF HIS OR HER PHYSICAL AND EMOTIONAL CONDITION AND THE CIRCUMSTANCES SURROUNDING THE CHILD'S PRESENCE AT THE PROGRAM, UNLESS THERE ARE COMPELLING CIRCUMSTANCES WHY THE PARENT, GUARDIAN OR CUSTODIAN SHOULD NOT BE SO NOTIFIED. WHERE SUCH CIRCUMSTANCES EXIST, THE ADVOCATE OR OTHER APPROPRIATE STAFF MEMBER SHALL EITHER FILE AN APPROPRIATE PETITION IN THE FAMILY COURT, REFER THE YOUTH TO THE LOCAL SOCIAL SERVICES DISTRICT, OR IN INSTANCES WHERE ABUSE OR NEGLECT IS SUSPECTED, REPORT SUCH CASE PURSUANT TO TITLE SIX OF THIS ARTICLE.

5. The term "community-based program" means a program operated by a not-for-profit organization that provides services such as street outreach, voluntary drop-in services, peer counseling, individual counseling, family-therapy and referrals for services such as educational and vocational training and health care. Any SUCH community-based program [funded under this article shall] MAY also work with the safe house [created under this article] SERVING SEXUALLY EXPLOITED CHILDREN AS DEFINED IN THIS TITLE to provide transitional services to SUCH children returning to the community.

S 2. Subdivisions 1, 2, 3, 5 and 6 of section 447-b of the social services law, as added by chapter 569 of the laws of 2008, are amended to read as follows:

1. Notwithstanding any inconsistent provision of law, pursuant to regulations of the office of children and family services, every local social services district shall as a component of the district's multi-year consolidated services child welfare services plan address the child welfare services needs of sexually exploited children and to the extent that funds are available SPECIFICALLY THEREFOR ensure that [preventative services including] a short-term safe house or another short-term safe placement such as an approved runaway and homeless youth program, approved respite or crisis program providing crisis intervention or

respite services or community-based program to serve sexually exploited children is available to children residing in such district. Nothing in this section shall prohibit a local social services district from utilizing existing respite or crisis intervention services already operated by such social services district or homeless youth programs or services for victims of human trafficking pursuant to article ten-D of this chapter so long as the staff members have received appropriate training approved by the office of children and family services regarding sexually exploited children and the existing programs and facilities provide a safe, secure and appropriate environment for sexually exploited children. Crisis intervention services, short-term safe house care and community-based programming may, where appropriate, be provided by the same not-for-profit agency. Local social services districts may work cooperatively to provide such short-term safe house or other short-term safe placement, services and programming and access to such placement, services and programming may be provided on a regional basis, provided, however, that every local social services district shall to the extent that funds are available ensure that such placement, services and programs shall be readily accessible to sexually exploited children residing within the district.

2. All of the services created under this [article] TITLE may, to the extent possible provided by law, be available to all sexually exploited children whether they are accessed voluntarily, as a condition of an adjournment in contemplation of dismissal issued in criminal court, through the diversion services created under section seven hundred thirty-five of the family court act, through a proceeding under article three of the family court act, a proceeding under article ten of the family court act or through a referral from a local social services agency.

3. The capacity of the crisis intervention services and community-based programs in subdivision one of this section shall be based on the number of sexually exploited children in each district who are in need of such services. A determination of such need shall be made [annually] IN TWO THOUSAND TEN AND EVERY FIVE YEARS THEREAFTER in every social services district by the local commissioner of social services and be included in the integrated county plan. Such determination shall be made in consultation with local law enforcement, runaway and homeless youth program providers, local probation departments, local social services commissioners, the runaway and homeless youth coordinator for the local social services district, local law guardians, presentment agencies, public defenders and district attorney's offices and child advocates and services providers who work directly with sexually exploited youth.

5. [The] TO THE EXTENT FUNDS ARE SPECIFICALLY APPROPRIATED THEREFOR, THE office of children and family services shall contract with an appropriate not-for-profit agency with experience working with sexually exploited children to operate at least one LONG-TERM safe house in a geographically appropriate area of the state which shall provide safe and secure long term housing and specialized services for sexually exploited children throughout the state. The appropriateness of the geographic location shall be determined taking into account the areas of the state with high numbers of sexually exploited children and the need for sexually exploited children to find shelter and long term placement in a region that cannot be readily accessed by the perpetrators of sexual exploitation. The need for more than one LONG-TERM safe house shall be determined by the office of children and family services based on the numbers and geographical location of sexually exploited children within

the state. NOTHING HEREIN SHALL BE CONSTRUED TO PRECLUDE AN AGENCY FROM APPLYING FOR AND/OR ACCEPTING GRANTS, GIFTS AND BEQUESTS OF FUNDS FROM PRIVATE INDIVIDUALS, FOUNDATIONS AND/OR THE FEDERAL GOVERNMENT FOR THE PURPOSE OF CREATING OR CARRYING OUT THE DUTIES OF A LONG-TERM SAFE HOUSE.

6. The local social services commissioner may, to the extent that funds are available, in conjunction with THE DIVISION OF CRIMINAL JUSTICE SERVICES AND local law enforcement officials, contract with an appropriate not-for-profit agency with experience working with sexually exploited children to train law enforcement officials who are likely to encounter sexually exploited children in the course of their law enforcement duties on the provisions of this section and how to identify and obtain appropriate services for sexually exploited children. Local social services districts may work cooperatively to provide such training and such training may be provided on a regional basis. The [office of children and family services] DIVISION OF CRIMINAL JUSTICE SERVICES shall assist local social services districts in obtaining any available funds for the purposes of conducting law enforcement training from the federal justice department and/or the office of juvenile justice and delinquency prevention.

S 3. Paragraph (c) of subdivision 4 of section 305.2 of the family court act, as added by chapter 920 of the laws of 1982, is amended and two new paragraphs (d) and (e) are added to read as follows:

(c) take the child to a place certified by the [state division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES as a juvenile detention facility for the reception of children[.]; OR

(D) TAKE A CHILD WHO SUCH OFFICER HAS DECIDED TO TAKE INTO CUSTODY IN ACCORDANCE WITH THIS SECTION OR SECTION 305.1 OF THIS PART FOR VIOLATING THE PROVISIONS OF SECTION 230.00 OR 240.37 OF THE PENAL LAW, TO AN AVAILABLE SHORT-TERM SAFE HOUSE AS DEFINED BY SECTION FOUR HUNDRED FORTY-SEVEN-A OF THE SOCIAL SERVICES LAW; OR

(E) TAKE A CHILD WHO APPEARS TO BE A SEXUALLY EXPLOITED CHILD AS DEFINED IN PARAGRAPHS (A), (C) OR (D) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED FORTY-SEVEN-A OF THE SOCIAL SERVICES LAW TO AN AVAILABLE SHORT-TERM SAFE HOUSE AS DEFINED IN SUBDIVISION TWO OF SECTION FOUR HUNDRED FORTY-SEVEN-A OF THE SOCIAL SERVICES LAW, BUT ONLY IF THE CHILD CONSENTS TO BE TAKEN.

S 4. Subdivision 3 of section 311.4 of the family court act, as added by chapter 569 of the laws of 2008, is amended to read as follows:

3. In any proceeding under this article based upon an arrest for an act of prostitution OR WHERE IT APPEARS THAT THE RESPONDENT ENGAGED IN LOITERING FOR THE PURPOSE OF ENGAGING IN A PROSTITUTION OFFENSE, there is a presumption that the respondent meets the criteria [for a certification] as a victim of a severe form of trafficking as defined in section 7105 of title 22 of the United States Code (Trafficking Victims Protection Act of 2000). Upon the motion of the respondent, without the consent of the presentment agency, a petition alleging that the respondent is in need of supervision shall be substituted for the delinquency petition. If, however, the respondent [is not a victim of a severe form of trafficking as defined by the federal Trafficking Victims Protection Act of 2000] WAS NOT INTIMIDATED, FORCED, THREATENED OR COERCED INTO ENGAGING IN PROSTITUTION OR LOITERING FOR THE PURPOSES OF ENGAGING IN A PROSTITUTION OFFENSE, or has been previously [found] ADJUDICATED AS A JUVENILE DELINQUENT under this article [to have committed an offense] FOR AN ACT WHICH WOULD BE A CRIME pursuant to article two hundred thirty of the penal law IF THE RESPONDENT WAS AN ADULT, or has been previously

adjudicated under section seven hundred fifty-two of this chapter and placed with a commissioner of social services pursuant to [subdivisions] SUBDIVISION (a) [and (b)] of section seven hundred fifty-six of this chapter, or expresses a current unwillingness to cooperate with specialized services for sexually exploited youth, continuing with the delinquency proceeding shall be within the court's discretion. The necessary findings of fact to support the continuation of the delinquency proceeding shall be reduced to writing and made part of the court record. If, subsequent to issuance of a substitution order under this subdivision AND PRIOR TO THE CONCLUSION OF THE FACT FINDING HEARING ON THE PETITION ALLEGING THAT THE RESPONDENT IS A PERSON IN NEED OF SUPERVISION, the respondent is not in substantial compliance with a lawful order of the court, the court may, in its discretion, substitute [a] THE ORIGINAL petition alleging that the respondent is a juvenile delinquent for the petition alleging that the respondent is in need of supervision.

S 5. Subdivision 3 of section 320.5 of the family court act is amended by adding a new paragraph (d) to read as follows:

(D) IF THE RESPONDENT MAY BE A SEXUALLY EXPLOITED CHILD AS DEFINED BY SECTION FOUR HUNDRED FORTY-SEVEN-A OF THE SOCIAL SERVICES LAW, THE COURT MAY DIRECT THE RESPONDENT TO AN AVAILABLE SHORT-TERM SAFE HOUSE AS A CONDITION OF RELEASE.

S 6. The opening paragraph of subdivision 2 of section 353.3 of the family court act, as added by chapter 920 of the laws of 1982, is amended to read as follows:

Where the respondent is placed with the commissioner of social services, the court may direct the commissioner to place him OR HER with an authorized agency or class of authorized agencies , INCLUDING, IF THE COURT FINDS THAT THE RESPONDENT IS A SEXUALLY EXPLOITED CHILD AS DEFINED IN SECTION FOUR HUNDRED FORTY-SEVEN-A OF THE SOCIAL SERVICES LAW, AN AVAILABLE LONG-TERM SAFE HOUSE. Unless the dispositional order provides otherwise, the court so directing shall include one of the following alternatives to apply in the event that the commissioner is unable to so place the respondent:

S 7. Subdivision 4 of section 353.3 of the family court act, as amended by chapter 465 of the laws of 1992, is amended to read as follows:

4. Where the respondent is placed with the [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES, the court may direct the [division] OFFICE to place the respondent with an authorized agency or class of authorized agencies, INCLUDING, IF THE COURT FINDS THAT THE RESPONDENT IS A SEXUALLY EXPLOITED CHILD AS DEFINED IN SECTION FOUR HUNDRED FORTY-SEVEN-A OF THE SOCIAL SERVICES LAW, AN AVAILABLE LONG-TERM SAFE HOUSE, and in the event the [division] OFFICE is unable to so place the respondent or, discontinues the placement with the authorized agency, the respondent shall be deemed to have been placed with the [division] OFFICE pursuant to paragraph (b) or (c) of subdivision three of this section. In such cases, the [division] OFFICE shall notify the court, presentment agency, law guardian and parent or other person responsible for the respondent's care, of the reason for discontinuing the placement with the authorized agency and the level and location of the youth's placement.

S 8. Subdivision (a) of section 712 of the family court act, as amended by chapter 569 of the laws of 2008, is amended to read as follows:

(a) "Person in need of supervision". A person less than eighteen years of age who does not attend school in accordance with the provisions of

part one of article sixty-five of the education law or who is incorrigible, ungovernable or habitually disobedient and beyond the lawful control of a parent or other person legally responsible for such child's care, or other lawful authority, or who violates the provisions of section 221.05, 230.00, or 240.37 of the penal law, OR WHO APPEARS TO BE A SEXUALLY EXPLOITED CHILD AS DEFINED IN PARAGRAPH (A), (C) OR (D) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED FORTY-SEVEN-A OF THE SOCIAL SERVICES LAW, BUT ONLY IF THE CHILD CONSENTS TO THE FILING OF A PETITION UNDER THIS ARTICLE.

S 9. Subdivision 5 of section 720 of the family court act is amended by adding a new paragraph (c) to read as follows:

(C) IF THE RESPONDENT MAY BE A SEXUALLY EXPLOITED CHILD AS DEFINED BY SECTION FOUR HUNDRED FORTY-SEVEN-A OF THE SOCIAL SERVICES LAW, THE COURT MAY DIRECT THE RESPONDENT TO AN AVAILABLE SHORT-TERM SAFE HOUSE AS AN ALTERNATIVE TO DETENTION.

S 10. Subdivisions (a), (b), (c) and (d) of section 732 of the family court act, subdivision (a) as amended by chapter 569 of the laws of 2008, subdivisions (b) and (c) as amended and subdivision (d) as added by section 6 of part E of chapter 57 of the laws of 2005, are amended and a new subdivision (b) is added to read as follows:

(a) (I) the respondent is an habitual truant or is incorrigible, ungovernable, or habitually disobedient and beyond the lawful control of his or her parents, guardian or lawful custodian, or has been the victim of sexual exploitation as defined in subdivision one of section four hundred forty-seven-a of the social services law, and specifying the acts on which the allegations are based and the time and place they allegedly occurred. Where habitual truancy is alleged or the petitioner is a school district or local educational agency, the petition shall also include the steps taken by the responsible school district or local educational agency to improve the school attendance and/or conduct of the respondent;

[(b)] (II) the respondent was under eighteen years of age at the time of the specified acts;

[(c)] (III) the respondent requires supervision or treatment; and

[(d)] (IV) the petitioner has complied with the provisions of section seven hundred thirty-five of this article[.]; OR

(B) THE RESPONDENT APPEARS TO BE A SEXUALLY EXPLOITED CHILD AS DEFINED IN PARAGRAPH (A), (C) OR (D) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED FORTY-SEVEN-A OF THE SOCIAL SERVICES LAW BUT ONLY IF THE CHILD CONSENTS TO THE FILING OF A PETITION UNDER THIS ARTICLE.

S 11. Subdivision (a) of section 739 of the family court act, as amended by section 8 of part E of chapter 57 of the laws of 2005, is amended to read as follows:

(a) After the filing of a petition under section seven hundred thirty-two of this article, the court in its discretion may release the respondent or direct his or her detention. IF THE RESPONDENT MAY BE A SEXUALLY EXPLOITED CHILD AS DEFINED BY SECTION FOUR HUNDRED FORTY-SEVEN-A OF THE SOCIAL SERVICES LAW, THE COURT MAY DIRECT THE RESPONDENT TO AN AVAILABLE SHORT-TERM SAFE HOUSE AS AN ALTERNATIVE TO DETENTION. However, the court shall not direct detention unless it finds and states the facts and reasons for so finding that unless the respondent is detained there is a substantial probability that the respondent will not appear in court on the return date and all available alternatives to detention have been exhausted.

S 12. Paragraph (ii) of subdivision (a) of section 756 of the family court act, as added by chapter 920 of the laws of 1982, is amended to read as follows:

(ii) Where the child is placed with the commissioner of social services, the court may direct the commissioner to place the child with an authorized agency or class of authorized agencies, INCLUDING, IF THE COURT FINDS THAT THE RESPONDENT IS A SEXUALLY EXPLOITED CHILD AS DEFINED IN SECTION FOUR HUNDRED FORTY-SEVEN-A OF THE SOCIAL SERVICES LAW, AN AVAILABLE LONG-TERM SAFE HOUSE. Unless the dispositional order provides otherwise, the court so directing shall include one of the following alternatives to apply in the event that the commissioner is unable to so place the child:

S 13. Paragraph (i) of subdivision (a) of section 1055 of the family court act, as amended by chapter 519 of the laws of 2008, is amended to read as follows:

(i) For purposes of section one thousand fifty-two of this part the court may place the child in the custody of a relative or other suitable person pursuant to this article, or of the local commissioner of social services or of such other officer, board or department as may be authorized to receive children as public charges, or a duly authorized association, agency, society or in an institution suitable for the placement of a child. THE COURT MAY ALSO PLACE A CHILD WHO IS DETERMINED TO BE A SEXUALLY EXPLOITED CHILD AS DEFINED IN SUBDIVISION ONE OF SECTION FOUR HUNDRED FORTY-SEVEN-A OF THE SOCIAL SERVICES LAW WITH THE LOCAL COMMISSIONER OF SOCIAL SERVICES FOR PLACEMENT IN AN AVAILABLE LONG-TERM SAFE HOUSE. The court may also place the child in the custody of the local commissioner of social services and may direct such commissioner to have the child reside with a relative or other suitable person who has indicated a desire to become a foster parent for the child and further direct such commissioner, pursuant to regulations of the office of children and family services, to commence an investigation of the home of such relative or other suitable person within twenty-four hours and thereafter expedite approval or certification of such relative or other suitable person, if qualified, as a foster parent. If such home is found to be unqualified for approval or certification, the local commissioner shall report such fact to the court forthwith so that the court may make a placement determination that is in the best interests of the child.

S 14. Section 532-a of the executive law is amended by adding a new subdivision 7 to read as follows:

7. "SAFE HOUSE" SHALL MEAN A RESIDENTIAL PROGRAM FOR SEXUALLY EXPLOITED CHILDREN AS DEFINED IN SECTION FOUR HUNDRED FORTY-SEVEN-A OF THE SOCIAL SERVICES LAW. AN APPROVED RUNAWAY PROGRAM MAY OPERATE A SHORT-TERM SAFE HOUSE FOR SEXUALLY EXPLOITED CHILDREN. A TRANSITIONAL INDEPENDENT LIVING SUPPORT PROGRAM MAY OPERATE A LONG-TERM SAFE HOUSE FOR SEXUALLY EXPLOITED CHILDREN.

S 15. This act shall take effect on the same date and in the same manner as chapter 569 of the laws of 2008, as amended, takes effect.