

3085

2009-2010 Regular Sessions

I N A S S E M B L Y

January 22, 2009

Introduced by M. of A. ROBINSON, SCARBOROUGH, TITUS, PERALTA, KOON,
PAULIN, PERRY, N. RIVERA -- read once and referred to the Committee on
Children and Families

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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision (g) of section 735 of the family court act, as
2 added by section 7 of part E of chapter 57 of the laws of 2005, is
3 amended to read as follows:
4 (g) (i) The designated lead agency shall promptly give written notice
5 to the potential petitioner whenever attempts to prevent the filing of a
6 petition have terminated, and shall indicate in such notice whether
7 efforts were successful. The notice shall also detail the diligent
8 attempts made to divert the case if a determination has been made that
9 there is no substantial likelihood that the youth will benefit from
10 further attempts. No persons in need of supervision petition may be
11 filed pursuant to this article during the period the designated lead
12 agency is providing diversion services. A finding by the designated lead
13 agency that the case has been successfully diverted shall constitute
14 presumptive evidence that the underlying allegations have been success-
15 fully resolved in any petition based upon the same factual allegations.
16 No petition may be filed pursuant to this article by the parent or other
17 person legally responsible for the youth where diversion services have
18 been terminated because of the failure of the parent or other person
19 legally responsible for the youth to consent to or actively participate.
20 (ii) [The] EXCEPT AS PROVIDED IN PARAGRAPH (III) OF THIS SUBDIVISION,
21 THE clerk of the court shall accept a petition for filing only if it has
22 attached thereto the following NOTICES:
23 (A) if the potential petitioner is the parent or other person legally
24 responsible for the youth, a notice from the designated lead agency

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

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1 indicating there is no bar to the filing of the petition as the poten-
2 tial petitioner consented to and actively participated in diversion
3 services; and

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

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

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

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

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

22 (b) At the initial appearance of the respondent, the court shall
23 review any termination of diversion services pursuant to such section,
24 and the documentation of diligent attempts to provide appropriate
25 services and determine whether such efforts or services provided are
26 sufficient and may, subject to the provisions of section seven hundred
27 forty-eight of this [article] PART, order that additional diversion
28 attempts be undertaken by the designated lead agency. The court may
29 order the youth and the parent or other person legally responsible for
30 the youth to participate in diversion services. AT THE INITIAL APPEAR-
31 ANCE OF THE RESPONDENT ON A PETITION FILED IN ACCORDANCE WITH SUBPARA-
32 GRAPH (A) OF PARAGRAPH (III) OF SUBDIVISION (G) OF SECTION SEVEN HUNDRED
33 THIRTY-FIVE OF THIS ARTICLE, THE COURT SHALL REFER THE RESPONDENT AND
34 PARENT TO THE DESIGNATED LEAD AGENCY FOR DIVERSION ATTEMPTS, UNLESS THE
35 COURT DETERMINES THAT THERE IS A SUBSTANTIAL LIKELIHOOD THAT THE CHILD
36 WOULD ABSCOND OR THAT IT WOULD BE CONTRARY TO THE CHILD'S BEST INTERESTS
37 FOR SUCH EFFORTS TO BE UNDERTAKEN. AT THE INITIAL APPEARANCE OF THE
38 RESPONDENT ON A PETITION FILED IN ACCORDANCE WITH SUBPARAGRAPH (B) OF
39 PARAGRAPH (III) OF SUBDIVISION (G) OF SECTION SEVEN HUNDRED THIRTY-FIVE
40 OF THIS ARTICLE, THE COURT SHALL REFER THE RESPONDENT AND PARENT TO THE
41 DESIGNATED LEAD AGENCY FOR DIVERSION ATTEMPTS, UNLESS THE COURT DETER-
42 MINES THAT THE CHILD CONTINUES TO POSE AN IMMINENT RISK TO THE PETITION-
43 ER OR A MEMBER OF HIS OR HER HOUSEHOLD OR THAT IT WOULD BE CONTRARY TO
44 THE CHILD'S BEST INTERESTS FOR SUCH EFFORTS TO BE UNDERTAKEN. If the
45 designated lead agency thereafter determines that [the] A case REFERRED
46 FOR DIVERSION EFFORTS UNDER THIS SUBDIVISION has been successfully
47 resolved, it shall so notify the court, and the court shall dismiss the
48 petition.

49 S 3. This act shall take effect on the ninetieth day after it shall
50 have become a law and shall apply to petitions filed on or after such
51 effective date.