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I N S E N A T E

March 25, 2010

Introduced by Sen. HASSELL-THOMPSON -- 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 probation, investi-
gation 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 handicap-
ping condition

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

1 Section 1. Subdivision 1 of section 351.1 of the family court act, as
2 amended by chapter 398 of the laws of 1983, is amended to read as
3 follows:
4 1. Following a determination that a respondent has committed a desig-
5 nated felony act OR ANY OTHER JUVENILE DELINQUENT WHOM THE COURT REASON-
6 ABLY FINDS, ON THE RECORD, TO HAVE A DEMONSTRABLE NEED FOR A REMEDIATION
7 OF A DISCERNIBLE HANDICAPPING CONDITION and prior to the dispositional
8 hearing, the judge shall order a probation investigation and a diagnos-
9 tic assessment. For the purposes of this article, the probation investi-
10 gation shall include, but not be limited to, the history of the juvenile
11 including previous conduct, the family situation, any previous psycho-
12 logical and psychiatric reports, school adjustment, previous social
13 assistance provided by voluntary or public agencies and the response of
14 the juvenile to such assistance. For the purposes of this article, the
15 diagnostic assessment shall include, but not be limited to, psycholog-
16 ical tests and psychiatric interviews to determine mental capacity and
17 achievement, emotional stability and mental disabilities. It shall
18 include a clinical assessment of the situational factors that may have
19 contributed to the act or acts. When feasible, expert opinion shall be
20 rendered as to the risk presented by the juvenile to others or himself,
21 with a recommendation as to the need for a restrictive placement.
22 S 2. Subdivision 3 of section 351.1 of the family court act, as added
23 by chapter 920 of the laws of 1982, is amended to read as follows:

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

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1 3. A child shall not be placed in accord with section 353.3 unless the
2 court has ordered a probation investigation prior to the dispositional
3 hearing; a child shall not be placed in accord with section 353.4 unless
4 the court has ordered a diagnostic assessment prior to such hearing. THE
5 DIAGNOSTIC ASSESSMENT SHALL BE COMPLETED BY AN INTERDISCIPLINARY TEAM
6 CONSISTING OF, BUT NOT LIMITED TO, A PSYCHOLOGIST, A SOCIAL WORKER, A
7 SPECIAL EDUCATOR, A PHYSICIAN, AND A LAW GUARDIAN AND/OR LEGAL COUNSEL.
8 S 3. Subdivisions 1 and 4 of section 353.4 of the family court act,
9 subdivision 1 as amended by chapter 465 of the laws of 1992 and subdivi-
10 sion 4 as added by chapter 920 of the laws of 1982, are amended to read
11 as follows:

12 1. If at the conclusion of the dispositional hearing and in accordance
13 with section 352.2 the court finds that the respondent has a mental
14 illness, mental retardation or developmental disability, as defined in
15 section 1.03 of the mental hygiene law, which is likely to result in
16 serious harm to himself or others, the court may issue an order placing
17 such respondent with the [division for youth] OFFICE OF CHILDREN AND
18 FAMILY SERVICES or, with the consent of the local commissioner, with a
19 local commissioner of social services, OR THE COMMISSIONER OF MENTAL
20 HEALTH OR THE COMMISSIONER OF MENTAL RETARDATION AND DEVELOPMENTAL DISA-
21 BILITIES CONSISTENT WITH PLACEMENT PROVISIONS AS OUTLINED IN CHAPTER
22 SEVEN HUNDRED FIFTY-SEVEN OF THE LAWS OF NINETEEN HUNDRED SEVENTY-SEVEN,
23 CHAPTER FIVE HUNDRED SIXTY-THREE OF THE LAWS OF NINETEEN HUNDRED EIGHTY
24 AND ARTICLE EIGHTY-ONE OF THE EDUCATION LAW, AND/OR ANY VOLUNTARY OR
25 NOT-FOR-PROFIT AGENCY LICENSED UNDER THESE PROVISIONS OF LAW NOT INCON-
26 SISTENT WITH THE RULES AND REGULATIONS GOVERNING THE PLACEMENT OF
27 CLIENTS. Any such order shall direct the temporary transfer for admis-
28 sion of the respondent to the custody of either the commissioner of
29 mental health or the commissioner of mental retardation and develop-
30 mental disabilities who shall arrange the admission of the respondent to
31 the appropriate facility of the department of mental hygiene. The direc-
32 tor of a hospital operated by the office of mental health may, subject
33 to the provisions of section 9.51 of the mental hygiene law, transfer a
34 person admitted to the hospital pursuant to this subdivision to a resi-
35 dential treatment facility for children and youth, as that term is
36 defined in section 1.03 of the mental hygiene law, if care and treatment
37 in such a facility would more appropriately meet the needs of the
38 respondent. Persons temporarily transferred to such custody under this
39 provision may be retained for care and treatment for a period of up to
40 one year and whenever appropriate shall be transferred back to the
41 [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES pursuant to
42 the provisions of section five hundred nine of the executive law or
43 transferred back to the local commissioner of social services. Within
44 thirty days of such transfer back, application shall be made by the
45 [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES or the local
46 commissioner of social services to the placing court to conduct a
47 further dispositional hearing at which the court may make any order
48 authorized under section 352.2, except that the period of any further
49 order of disposition shall take into account the period of placement
50 hereunder. Likelihood to result in serious harm shall mean (a) substan-
51 tial risk of physical harm to himself as manifested by threats or
52 attempts at suicide or serious bodily harm or other conduct demonstrat-
53 ing he is dangerous to himself or (b) a substantial risk of physical
54 harm to other persons as manifested by homicidal or other violent behav-
55 ior by which others are placed in reasonable fear of serious bodily
56 harm.

1 4. No order of disposition placing the respondent in accordance with
2 this section shall be entered except upon clear and convincing evidence
3 which shall include the testimony of [two examining physicians as
4 provided in section two hundred fifty-one] THE INTERDISCIPLINARY TEAM
5 ESTABLISHED IN SUBDIVISION THREE OF SECTION 351.1 OF THIS PART.
6 S 4. This act shall take effect on the first of November next succeed-
7 ing the date on which it shall have become a law.