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

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I N A S S E M B L Y

June 12, 2012

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Robinson, Paulin) -- (at request of the Office of Court Administration) -- 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 in family court

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

Section 1. Paragraph (ii) of subdivision (g) and subdivision (h) of section 735 of the family court act, as added by section 7 of part E of chapter 57 of the laws of 2005, are amended and a new paragraph (iii) of subdivision (g) is added to read as follows:

(ii) [The] EXCEPT AS PROVIDED IN PARAGRAPH (III) OF THIS SUBDIVISION, THE clerk of the court shall accept a petition for filing only if it has attached thereto the following NOTICES:

(A) if the potential petitioner is the parent or other person legally responsible for the youth, a notice from the designated lead agency indicating THAT there is no bar to the filing of the petition as the potential petitioner consented to and actively participated in diversion services; and

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

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

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

(B) THE POTENTIAL PETITIONER IS REQUESTING THAT THE COURT ISSUE A TEMPORARY ORDER OF PROTECTION, PURSUANT TO SECTION SEVEN HUNDRED FORTY OF THIS PART, BECAUSE THE RESPONDENT POSES AN IMMINENT RISK OF HARM TO THE POTENTIAL PETITIONER OR MEMBERS OF HIS OR HER HOUSEHOLD.

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

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(h) No statement made to the designated lead agency or to any agency or organization to which the potential respondent HAS BEEN REFERRED, prior to the filing of the petition, or if the petition has been filed, prior to the time the respondent has been notified that attempts at diversion will not be made or have been terminated, or prior to the commencement of a fact-finding hearing if attempts at diversion have not terminated previously, may be admitted into evidence at a fact-finding hearing or, if the proceeding is transferred to a criminal court, at any time prior to a conviction.

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

(b) At the initial appearance of the respondent, the court shall review any termination of diversion services pursuant to such section, and the documentation of diligent attempts to provide appropriate services and determine whether such efforts or services provided are sufficient [and may,]. THE COURT MAY, AT ANY TIME, subject to the provisions of section seven hundred forty-eight of this article, order that additional diversion attempts be undertaken by the designated lead agency. The court may order the youth and the parent or other person legally responsible for the youth to participate in diversion services. AT THE INITIAL APPEARANCE OF THE RESPONDENT ON A PETITION FILED IN ACCORDANCE WITH SUBPARAGRAPH (A) OF PARAGRAPH (III) OF SUBDIVISION (G) OF SECTION SEVEN HUNDRED THIRTY-FIVE OF THIS ARTICLE, THE COURT SHALL REFER THE RESPONDENT AND PARENT TO THE DESIGNATED LEAD AGENCY FOR DIVERSION ATTEMPTS, UNLESS THE COURT DETERMINES THAT THERE IS A SUBSTANTIAL LIKELIHOOD THAT THE CHILD WOULD ABSCOND OR THERE IS NO SUBSTANTIAL LIKELIHOOD THAT THE YOUTH AND HIS OR HER FAMILY WOULD BENEFIT FROM DIVERSION ATTEMPTS. AT THE INITIAL APPEARANCE OF THE RESPONDENT ON A PETITION FILED IN ACCORDANCE WITH SUBPARAGRAPH (B) OF PARAGRAPH (III) OF SUBDIVISION (G) OF SECTION SEVEN HUNDRED THIRTY-FIVE OF THIS ARTICLE, THE COURT SHALL REFER THE RESPONDENT AND PARENT TO THE DESIGNATED LEAD AGENCY FOR DIVERSION ATTEMPTS, UNLESS THE COURT DETERMINES THAT THE CHILD CONTINUES TO POSE AN IMMINENT RISK TO THE PETITIONER OR A MEMBER OF HIS OR HER FAMILY WOULD BENEFIT FROM DIVERSION ATTEMPTS. If the designated lead agency thereafter determines that [the] A case REFERRED FOR DIVERSION EFFORTS UNDER THIS SECTION has been successfully resolved, it shall so notify the court, and the court shall dismiss the petition.

S 3. This act shall take effect on the ninetieth day after it shall have become a law.