

4050--B

Cal. No. 300

2011-2012 Regular Sessions

I N S E N A T E

March 15, 2011

Introduced by Sen. GALLIVAN -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading -- again amended and ordered reprinted, retaining its place in the order of third reading

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 ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivisions (g) and (h) of section 735 of the family court
2 act, as added by section 7 of part E of chapter 57 of the laws of 2005,
3 are 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

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

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1 been terminated because of the failure of the parent or other person
2 legally responsible for the youth to consent to or actively participate.

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

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

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

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

17 (A) THE POTENTIAL PETITIONER IS REQUESTING THAT THE COURT ISSUE A
18 WARRANT PURSUANT TO SECTION SEVEN HUNDRED THIRTY-EIGHT OF THIS ARTICLE,
19 BECAUSE THE RESPONDENT HAS ABSCONDED FROM THE HOME AND IS UNABLE TO BE
20 LOCATED AND THE POTENTIAL PETITIONER HAS MET WITH THE DESIGNATED LEAD
21 AGENCY WHICH MUST MAKE EFFORTS TO LOCATE THE CHILD AND THOSE EFFORTS BY
22 THE DESIGNATED LEAD AGENCY HAVE NOT LOCATED THE CHILD; OR

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

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

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

39 (b) At the initial appearance of the respondent, the court shall
40 review any termination of diversion services pursuant to such section,
41 and the documentation of diligent attempts to provide appropriate
42 services and determine whether such efforts or services provided are
43 sufficient [and]. THE COURT may, AT ANY TIME, subject to the provisions
44 of section seven hundred forty-eight of this article, order that addi-
45 tional diversion attempts be undertaken by the designated lead agency.
46 The court may order the youth and the parent or other person legally
47 responsible for the youth to participate in diversion services. AT THE
48 INITIAL APPEARANCE OF THE RESPONDENT ON A PETITION FILED IN ACCORDANCE
49 WITH SUBPARAGRAPH (A) OF PARAGRAPH (III) OF SUBDIVISION (G) OF SECTION
50 SEVEN HUNDRED THIRTY-FIVE OF THIS ARTICLE, THE COURT SHALL REFER THE
51 RESPONDENT AND PARENT TO THE DESIGNATED LEAD AGENCY FOR DIVERSION
52 ATTEMPTS, UNLESS THE COURT DETERMINES THAT THERE IS A SUBSTANTIAL LIKE-
53 LIHOOD THAT THE CHILD WOULD ABSCOND OR THERE IS NO SUBSTANTIAL LIKELI-
54 HOOD THAT THE YOUTH AND HIS OR HER FAMILY WOULD BENEFIT FROM DIVERSION
55 ATTEMPTS. AT THE INITIAL APPEARANCE OF THE RESPONDENT ON A PETITION
56 FILED IN ACCORDANCE WITH SUBPARAGRAPH (B) OF PARAGRAPH (III) OF SUBDIVI-

1 SION (G) OF SECTION SEVEN HUNDRED THIRTY-FIVE OF THIS ARTICLE, THE COURT
2 SHALL REFER THE RESPONDENT AND PARENT TO THE DESIGNATED LEAD AGENCY FOR
3 DIVERSION ATTEMPTS, UNLESS THE COURT DETERMINES THAT THE CHILD CONTINUES
4 TO POSE AN IMMINENT RISK TO THE PETITIONER OR A MEMBER OF HIS OR HER
5 HOUSEHOLD OR THAT THERE IS NO SUBSTANTIAL LIKELIHOOD THAT THE YOUTH OR
6 HIS OR HER FAMILY WOULD BENEFIT FROM DIVERSION ATTEMPTS. If the desig-
7 nated lead agency thereafter determines that [the] A case REFERRED FOR
8 DIVERSION EFFORTS UNDER THIS SECTION has been successfully resolved, it
9 shall so notify the court, and the court shall dismiss the petition.
10 S 3. This act shall take effect on the ninetieth day after it shall
11 have become a law.