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

6905

2011-2012 Regular Sessions

I N A S S E M B L Y

April 5, 2011

Introduced by M. of A. KELLNER -- read once and referred to the Committee on Judiciary

AN ACT to amend the family court act, in relation to attorneys for children

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

Section 1. Section 249 of the family court act, as amended by chapter 41 of the laws of 2010, is amended to read as follows:

S 249. Appointment of attorney for child. (a) In a proceeding under article three, seven, ten or ten-A of this act or where a revocation of an adoption consent is opposed under section one hundred fifteen-b of the domestic relations law or in any proceeding under section three hundred fifty-eight-a, three hundred eighty-three-c, three hundred eighty-four or three hundred eighty-four-b of the social services law or when a minor is sought to be placed in protective custody under section one hundred fifty-eight of this act, the family court shall appoint an attorney to represent a minor who is the subject of the proceeding or who is sought to be placed in protective custody[, if independent legal representation is not available to such minor]. In any proceeding to extend or continue the placement of a juvenile delinquent or person in need of supervision pursuant to section seven hundred fifty-six or 353.3 of this act or any proceeding to extend or continue a commitment to the custody of the commissioner of mental health or the commissioner of mental retardation and developmental disabilities pursuant to section 322.2 of this act, the court shall not permit the respondent to waive the right to be represented by [counsel chosen by the respondent, respondent's parent, or other person legally responsible for the respondent's care, or by] assigned counsel. In any other proceeding in which the court has jurisdiction, the court may appoint an attorney to represent the child, when, in the opinion of the family court judge, such representation will serve the purposes of this act[, if independent

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

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legal counsel is not available to the child]. The family court on its own motion may make such appointment.

(b) In making an appointment of an attorney for a child pursuant to this section, the court shall, to the extent practicable and appropriate, appoint the same attorney who has previously represented the child. Notwithstanding any other provision of law, in a proceeding under article three of this act following an order of removal made pursuant to article seven hundred twenty-five of the criminal procedure law, the court shall, wherever practicable, appoint the same counsel who represented the juvenile offender in the criminal proceedings.

(C) IN MAKING AN APPOINTMENT OF AN ATTORNEY FOR A CHILD PURSUANT TO THIS SECTION, THE COURT SHALL APPOINT SUCH COUNSEL THAT:

1. SHALL NOT BE AFFILIATED PERSONALLY OR FINANCIALLY WITH EITHER PARENT OF SUCH MINOR;

2. SHALL NOT SUBSEQUENTLY BE EMPLOYED, HIRED OR CONSULTED BY EITHER PARENT OF SUCH MINOR; AND

3. WHERE THE PARENTS OF SUCH CHILD CAN AFFORD TO PAY FOR SUCH REPRESENTATION, SHALL BE COMPENSATED BY FUNDS DEPOSITED TO THE FAMILY COURT IN A MANNER TO BE DETERMINED BY THE CHIEF ADMINISTRATOR OF THE COURTS PURSUANT TO SECTION TWO HUNDRED TWELVE OF THE JUDICIARY LAW.

S 2. Section 249-a of the family court act, as amended by chapter 41 of the laws of 2010, is amended to read as follows:

S 249-a. Waiver OR REASSIGNMENT of counsel. (A) A minor who is a subject of a juvenile delinquency or person in need of supervision proceeding shall be presumed to lack the requisite knowledge and maturity to waive the appointment of an attorney. This presumption may be rebutted only after an attorney has been appointed and the court determines after a hearing at which the attorney appears and participates and upon clear and convincing evidence that:

[(a)] 1. the minor understands the nature of the charges, the possible dispositional alternatives and the possible defenses to the charges,

[(b)] 2. the minor possesses the maturity, knowledge and intelligence necessary to conduct his or her own defense, and

[(c)] 3. waiver is in the best interest of the minor.

(B) A MINOR WHO IS THE SUBJECT OF A JUVENILE DELINQUENCY OR PERSON IN NEED OF SUPERVISION PROCEEDING, AFTER APPEALING TO THE JUDGE FOR A REASSIGNMENT OF AN APPOINTED ATTORNEY, MAY APPEAL, IN A MANNER TO BE DETERMINED BY THE CHIEF ADMINISTRATOR OF THE COURTS PURSUANT TO SECTION TWO HUNDRED TWELVE OF THE JUDICIARY LAW, TO THE ADMINISTRATIVE BOARD OF THE JUDICIAL CONFERENCE FOR A NEW APPOINTED ATTORNEY.

S 3. Subdivision (c) of section 1120 of the family court act, as amended by chapter 41 of the laws of 2010, is amended to read as follows:

(c) An appellate court may appoint an attorney to represent a child in an appeal in a proceeding originating in the family court where an attorney was not representing the child at the time of the entry of the order appealed from or at the time of the filing of the motion for permission to appeal [and when independent legal representation is not available to such child].

S 4. This act shall take effect immediately.