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2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. GANTT -- read once and referred to the Committee
on Children and Families

AN ACT to amend the family court act, in relation to probation, investigation 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 handicapping condition

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, 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.

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

LBD03214-01-1

1 S 2. Subdivision 3 of section 351.1 of the family court act, as added
2 by chapter 920 of the laws of 1982, is amended to read as follows:

3 3. A child shall not be placed in accord with section 353.3 unless the
4 court has ordered a probation investigation prior to the dispositional
5 hearing; a child shall not be placed in accord with section 353.4 unless
6 the court has ordered a diagnostic assessment prior to such hearing. THE
7 DIAGNOSTIC ASSESSMENT SHALL BE COMPLETED BY AN INTERDISCIPLINARY TEAM
8 CONSISTING OF, BUT NOT LIMITED TO, A PSYCHOLOGIST, A SOCIAL WORKER, A
9 SPECIAL EDUCATOR, A PHYSICIAN, AND A LAW GUARDIAN AND/OR LEGAL COUNSEL.

10 S 3. Subdivisions 1 and 4 of section 353.4 of the family court act,
11 subdivision 1 as amended by chapter 465 of the laws of 1992 and subdivi-
12 sion 4 as added by chapter 920 of the laws of 1982, are amended to read
13 as follows:

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

1 ior by which others are placed in reasonable fear of serious bodily
2 harm.

3 4. No order of disposition placing the respondent in accordance with
4 this section shall be entered except upon clear and convincing evidence
5 which shall include the testimony of [two examining physicians as
6 provided in section two hundred fifty-one] THE INTERDISCIPLINARY TEAM
7 ESTABLISHED IN SUBDIVISION THREE OF SECTION 351.1 OF THIS PART.

8 S 4. This act shall take effect on the first of November next succeed-
9 ing the date on which it shall have become a law.