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

2738

2011-2012 Regular Sessions

I N S E N A T E

January 31, 2011

Introduced by Sen. SALAND -- 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 evidence of child neglect where the respondent is voluntarily and regularly participating in a recognized drug rehabilitation program and requiring enrollment in rehabilitative programs

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

Section 1. Subparagraph (B) of paragraph (i) of subdivision (f) of section 1012 of the family court act, as amended by chapter 984 of the laws of 1981, is amended to read as follows:

(B) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by misusing a drug or drugs; or by misusing alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature requiring the aid of the court[; provided, however, that where the respondent is voluntarily and regularly participating in a rehabilitative program, evidence that the respondent has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he loses self-control of his actions shall not establish that the child is a neglected child in the absence of evidence establishing that the child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as set forth in paragraph (i) of this subdivision]; or

S 2. Paragraph (iii) of subdivision (a) of section 1046 of the family court act, as amended by chapter 984 of the laws of 1981, is amended to read as follows:

(iii) proof that a person repeatedly misuses a drug or drugs or alcoholic beverages, to the extent that it has or would ordinarily have the effect of producing in the user thereof a substantial state of stupor,

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

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unconsciousness, intoxication, hallucination, disorientation, or incompetence, or a substantial impairment of judgment, or a substantial manifestation of irrationality, shall be prima facie evidence that a child of or who is the legal responsibility of such person is a neglected child [except that such drug or alcoholic beverage misuse shall not be prima facie evidence of neglect when such person is voluntarily and regularly participating in a recognized rehabilitative program]; and

S 3. Section 1052 of the family court act is amended by adding a new subdivision (d) to read as follows:

(D) PRIOR TO GRANTING AN ORDER OF DISPOSITION IN A PROCEEDING WHEREIN THE RESPONDENT HAS BEEN FOUND TO HAVE MISUSED A DRUG OR DRUGS, OR TO HAVE MISUSED ALCOHOLIC BEVERAGES TO THE EXTENT THAT HE OR SHE LOSES SELF-CONTROL OF HIS OR HER ACTIONS, THE COURT SHALL CONSIDER WHETHER THE RESPONDENT HAS ENROLLED IN A RECOGNIZED REHABILITATIVE PROGRAM AND IS PARTICIPATING THEREIN IN A REGULAR AND SATISFACTORY MANNER, AND THE COURT MAY REQUIRE THE RESPONDENT TO ENROLL IN AND PARTICIPATE IN SUCH A PROGRAM IN CONNECTION WITH ANY ORDER OF DISPOSITION MADE UNDER SUBDIVISION (A) OF THIS SECTION.

S 4. This act shall take effect on the one hundred twentieth day after it shall have become a law.