

4301

2011-2012 Regular Sessions

I N S E N A T E

March 28, 2011

Introduced by Sen. SAVINO -- (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

AN ACT to amend the family court act, in relation to truancy allegations in persons in need of supervision and child protective proceedings in family court

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

1 Section 1. Paragraph (iii) of subdivision (d), paragraph (ii) of
2 subdivision (g) and subdivision (h) of section 735 of the family court
3 act, as amended by section 7 of part E of chapter 57 of the laws of
4 2005, are amended to read as follows:
5 (iii) where the entity seeking to file a petition is a school district
6 or local educational agency OR WHERE THE PARENT OR OTHER POTENTIAL PETI-
7 TIONER INDICATES THAT THE PROPOSED PETITION WILL INCLUDE TRUANCY AND/OR
8 CONDUCT IN SCHOOL AS AN ALLEGATION, the designated lead agency shall
9 review the steps taken by the school district or local educational agen-
10 cy to improve the youth's attendance and/or conduct in school and
11 attempt to engage the school district or local educational agency in
12 further diversion attempts, if it appears from review that such attempts
13 will be beneficial to the youth. WHERE THE SCHOOL DISTRICT OR LOCAL
14 EDUCATIONAL AGENCY IS NOT THE POTENTIAL PETITIONER, THE DESIGNATED LEAD
15 AGENCY SHALL PROVIDE NOTICE TO SUCH DISTRICT OR AGENCY OF ANY CONFERENCE
16 WITH THE POTENTIAL PETITIONER IN ORDER FOR THE SCHOOL DISTRICT OR LOCAL
17 EDUCATIONAL AGENCY TO WORK WITH THE DESIGNATED LEAD AGENCY TO RESOLVE
18 THE TRUANCY OR SCHOOL BEHAVIORAL PROBLEMS OF THE YOUTH SO AS TO OBVIATE
19 THE NEED TO FILE A PETITION OR, AT MINIMUM, TO RESOLVE THE EDUCATION-RE-
20 LATED ALLEGATIONS OF THE PROPOSED PETITION.
21 (ii) The clerk of the court shall accept a petition for filing only if
22 it has attached thereto the following:

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

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

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

11 (C) WHERE THE PROPOSED PETITION CONTAINS ALLEGATIONS OF TRUANCY AND/OR
12 SCHOOL MISBEHAVIOR, WHETHER OR NOT THE SCHOOL DISTRICT OR LOCAL EDUCA-
13 TION AGENCY IS THE PROPOSED PETITIONER, A NOTICE FROM THE DESIGNATED
14 LEAD AGENCY REGARDING THE DIVERSION EFFORTS UNDERTAKEN AND/OR SERVICES
15 PROVIDED BY THE DESIGNATED LEAD AGENCY AND/OR BY THE SCHOOL DISTRICT OR
16 LOCAL EDUCATIONAL AGENCY TO THE YOUTH AND GROUNDS FOR CONCLUDING THAT
17 THE EDUCATIONAL PROBLEMS COULD NOT BE RESOLVED ABSENT THE FILING OF A
18 PETITION UNDER THIS ARTICLE.

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

28 S 2. Section 736 of the family court act is amended by adding a new
29 subdivision 4 to read as follows:

30 (4) WHERE THE PETITION CONTAINS ALLEGATIONS OF TRUANCY AND/OR SCHOOL
31 MISBEHAVIOR AND WHERE THE SCHOOL DISTRICT OR LOCAL EDUCATIONAL AGENCY IS
32 NOT THE PETITIONER, THE COURT SHALL CAUSE A COPY OF THE PETITION AND
33 NOTICE OF THE TIME AND PLACE TO BE HEARD TO BE SENT TO THE SCHOOL
34 DISTRICT OR LOCAL EDUCATIONAL AGENCY IDENTIFIED BY THE DESIGNATED LEAD
35 AGENCY IN ITS NOTICE PURSUANT TO SUBPARAGRAPH (C) OF PARAGRAPH (II) OF
36 SUBDIVISION (G) OF SECTION SEVEN HUNDRED THIRTY-FIVE OF THIS ARTICLE.
37 SUCH SCHOOL DISTRICT OR LOCAL EDUCATIONAL AGENCY SHALL BE JOINED BY THE
38 COURT AS A NECESSARY PARTY AND MAY BE ASKED TO PROVIDE ASSISTANCE IN
39 ACCORDANCE WITH SECTION TWO HUNDRED FIFTY-FIVE OF THIS ACT WHERE THE
40 COURT DETERMINES THAT SUCH PARTICIPATION AND/OR ASSISTANCE WOULD AID IN
41 THE RESOLUTION OF THE PETITION.

42 S 3. Subdivision (b) of section 742 of the family court act, as
43 amended by section 9 of part E of chapter 57 of the laws of 2005, is
44 amended to read as follows:

45 (b) At the initial appearance of the respondent, the court shall
46 review any termination of diversion services pursuant to such section,
47 and the documentation of diligent attempts to provide appropriate
48 services and determine whether such efforts or services provided are
49 sufficient [and]. THE COURT may, AT ANY TIME, subject to the provisions
50 of section seven hundred forty-eight of this article, order that addi-
51 tional diversion attempts be undertaken by the designated lead agency.
52 The court may order the youth and the parent or other person legally
53 responsible for the youth to participate in diversion services. If the
54 designated lead agency thereafter determines that [the] A case REFERRED
55 FOR DIVERSION EFFORTS UNDER THIS SECTION has been successfully resolved,
56 it shall so notify the court, and the court shall dismiss the petition.

1 S 4. Subparagraph (A) of paragraph (i) of subdivision (f) of section
2 1012 of the family court act, as amended by chapter 469 of the laws of
3 1971, is amended to read as follows:

4 (A) in supplying the child with adequate food, clothing, shelter or
5 education in accordance with the provisions of part one of article
6 sixty-five of the education law, or medical, dental, optometrical or
7 surgical care, though financially able to do so or offered financial or
8 other reasonable means to do so, OR, IN THE CASE OF AN ALLEGED FAILURE
9 OF THE RESPONDENT TO PROVIDE EDUCATION TO THE CHILD, NOTWITHSTANDING THE
10 EFFORTS OF THE SCHOOL DISTRICT OR LOCAL EDUCATIONAL AGENCY AND CHILD
11 PROTECTIVE AGENCY TO AMELIORATE SUCH ALLEGED FAILURE PRIOR TO THE FILING
12 OF THE PETITION; or

13 S 5. Section 1031 of the family court act is amended by adding a new
14 subdivision (g) to read as follows:

15 (G) WHERE A PETITION UNDER THIS ARTICLE CONTAINS AN ALLEGATION OF A
16 FAILURE BY THE RESPONDENT TO PROVIDE EDUCATION TO THE CHILD IN ACCORD-
17 ANCE WITH ARTICLE SIXTY-FIVE OF THE EDUCATION LAW, REGARDLESS OF WHETHER
18 SUCH ALLEGATION IS THE SOLE ALLEGATION OF THE PETITION, THE PETITION
19 SHALL RECITE THE EFFORTS UNDERTAKEN BY THE PETITIONER AND THE SCHOOL
20 DISTRICT OR LOCAL EDUCATIONAL AGENCY TO AMELIORATE SUCH ALLEGED FAILURE
21 PRIOR TO THE FILING OF THE PETITION AND THE GROUNDS FOR CONCLUDING THAT
22 THE EDUCATIONAL PROBLEMS COULD NOT BE RESOLVED ABSENT THE FILING OF A
23 PETITION UNDER THIS ARTICLE.

24 S 6. Section 1035 of the family court act is amended by adding a new
25 subdivision (g) to read as follows:

26 (G) WHERE THE PETITION FILED UNDER THIS ARTICLE CONTAINS AN ALLEGATION
27 OF A FAILURE BY THE RESPONDENT TO PROVIDE EDUCATION TO THE CHILD IN
28 ACCORDANCE WITH ARTICLE SIXTY-FIVE OF THE EDUCATION LAW, THE COURT SHALL
29 CAUSE A COPY OF THE PETITION AND NOTICE OF THE TIME AND PLACE TO BE
30 HEARD TO BE SENT TO THE SCHOOL DISTRICT OR LOCAL EDUCATIONAL AGENCY
31 IDENTIFIED BY THE PETITIONER IN THE PETITION IN ACCORDANCE WITH SUBDIVI-
32 SION (G) OF SECTION ONE THOUSAND THIRTY-ONE OF THIS ARTICLE. SUCH SCHOOL
33 DISTRICT OR LOCAL EDUCATIONAL AGENCY SHALL BE JOINED BY THE COURT AS A
34 NECESSARY PARTY AND MAY BE ASKED TO PROVIDE ASSISTANCE IN ACCORDANCE
35 WITH SECTION TWO HUNDRED FIFTY-FIVE OF THIS ACT WHERE THE COURT DETER-
36 MINES THAT SUCH PARTICIPATION AND/OR ASSISTANCE WOULD AID IN THE RESOL-
37 UTION OF THE PETITION.

38 S 7. This act shall take effect on the ninetieth day after it shall
39 have become a law.