

10119

I N   A S S E M B L Y

June 16, 2014

---

Introduced by COMMITTEE ON RULES -- (at request of M. of A. McDonald) --  
read once and referred to the Committee on Children and Families

AN ACT to amend the family court act, in relation to involuntary treatment services for minors

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

1     Section 1. Subdivisions (a) and (i) of section 712 of the family court  
2     act, subdivision (a) as amended by section 7 of part G of chapter 58 of  
3     the laws of 2010 and subdivision (i) as added by section 1 of part E of  
4     chapter 57 of the laws of 2005, are amended and three new subdivisions  
5     (j), (k) and (l) are added to read as follows:  
6     (a) "Person in need of supervision". A person less than eighteen years  
7     of age who does not attend school in accordance with the provisions of  
8     part one of article sixty-five of the education law or who is incorrigi-  
9     ble, ungovernable or habitually disobedient and beyond the lawful  
10    control of a parent or other person legally responsible for such child's  
11    care, or other lawful authority, or who violates the provisions of  
12    section 221.05 or 230.00 of the penal law, or HAS A SUBSTANCE USE DISOR-  
13    DER, OR who appears to be a sexually exploited child as defined in para-  
14    graph (a), (c) or (d) of subdivision one of section four hundred forty-  
15    seven-a of the social services law, but only if the child consents to  
16    the filing of a petition under this article.  
17    (i) "Diversion services". Services provided to children and families  
18    pursuant to section seven hundred thirty-five of this article for the  
19    purpose of avoiding the need to file a petition or direct the detention  
20    of the child. Diversion services shall include: efforts to adjust cases  
21    pursuant to this article before a petition is filed, or by order of the  
22    court, after the petition is filed but before fact-finding is commenced;  
23    and preventive services provided in accordance with section four hundred  
24    nine-a of the social services law to avert the placement of the child  
25    into foster care, including crisis intervention and respite services.  
26    DIVERSION SERVICES MAY ALSO INCLUDE, IN CASES WHERE ANY PERSON IS SEEK-  
27    ING TO FILE A PETITION THAT ALLEGES THAT THE CHILD HAS A SUBSTANCE USE

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

LBD15365-04-4

DISORDER OR IS IN NEED OF IMMEDIATE TREATMENT DUE TO A SUBSTANCE USE DISORDER, AN ASSESSMENT FOR SUBSTANCE USE DISORDER.

(J) "SUBSTANCE USE DISORDER". THE MISUSE OF, DEPENDENCE ON, OR ADDICTION TO LEGAL OR ILLEGAL DRUGS LEADING TO EFFECTS THAT ARE DETRIMENTAL TO THE PERSON'S PHYSICAL AND MENTAL HEALTH OR THE WELFARE OF OTHERS.

(K) "ASSESSMENT FOR SUBSTANCE USE DISORDER". ASSESSMENT BY A PROVIDER THAT HAS BEEN CERTIFIED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES OF A PERSON LESS THAN EIGHTEEN YEARS OF AGE WHERE IT IS ALLEGED THAT THE YOUTH IS SUFFERING FROM A SUBSTANCE USE DISORDER WHICH COULD MAKE A YOUTH A DANGER TO HIMSELF OR HERSELF OR OTHERS.

(L) "SUBSTANCE USE TREATMENT SERVICES". SUBSTANCE USE TREATMENT SERVICES SHALL INCLUDE PARTICIPATION IN AN AVAILABLE CHEMICAL DEPENDENCE PROGRAM OR FACILITY ESTABLISHED IN ACCORDANCE WITH SECTIONS 19.09 AND 32.05 OF THE MENTAL HYGIENE LAW, AND ANY HOSPITAL AS DEFINED BY ARTICLE TWENTY-EIGHT OF THE PUBLIC HEALTH LAW, THAT ADMITS PERSONS FOR SUBSTANCE ABUSE TREATMENT.

S 2. Subdivision (b) of section 735 of the family court act, as added by section 7 of part E of chapter 57 of the laws of 2005, is amended to read as follows:

(b) The designated lead agency shall:

(i) confer with any person seeking to file a petition, the youth who may be a potential respondent, his or her family, and other interested persons, concerning the provision of diversion services before any petition may be filed; and

(ii) diligently attempt to prevent the filing of a petition under this article or, after the petition is filed, to prevent the placement of the youth into foster care; and

(iii) assess whether the youth would benefit from residential respite services; and

(iv) determine whether alternatives to detention are appropriate to avoid remand of the youth to detention; AND

(V) DETERMINE WHETHER AN ASSESSMENT OF THE YOUTH FOR SUBSTANCE USE DISORDER BY AN OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES CERTIFIED PROVIDER IS NECESSARY WHEN A PERSON SEEKING TO FILE A PETITION ALLEGES IN SUCH PETITION THAT THE YOUTH IS SUFFERING FROM A SUBSTANCE USE DISORDER WHICH COULD MAKE THE YOUTH A DANGER TO HIMSELF OR HERSELF OR OTHERS. THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES SHALL MAKE A LIST OF ITS CERTIFIED PROVIDERS AVAILABLE TO THE DESIGNATED LEAD AGENCY.

S 3. Subdivision 3 of section 720 of the family court act, as amended by section 9 of subpart B of part Q of chapter 58 of the laws of 2011, is amended and a new subdivision 6 is added to read as follows:

3. Detention of a person alleged to be or adjudicated as a person in need of supervision shall, except as provided in [subdivision] SUBDIVISIONS four AND SIX of this section, be authorized only in a foster care program certified by the office of children and family services, or a certified or approved family boarding home, or a non-secure detention facility certified by the office and in accordance with section seven hundred thirty-nine of this article. The setting of the detention shall take into account (a) the proximity to the community in which the person alleged to be or adjudicated as a person in need of supervision lives with such person's parents or to which such person will be discharged, and (b) the existing educational setting of such person and the proximity of such setting to the location of the detention setting.

6. IF THE RESPONDENT IS ALLEGED TO BE OR ADJUDICATED AS A PERSON IN NEED OF SUPERVISION DUE TO A SUBSTANCE USE DISORDER AS DEFINED BY SUBDIVISION (J) OF SECTION SEVEN HUNDRED TWELVE OF THIS ARTICLE, THE COURT MAY DIRECT SUCH RESPONDENT TO ANY AVAILABLE SUBSTANCE USE TREATMENT SERVICE AS DEFINED BY SUBDIVISION (L) OF SECTION SEVEN HUNDRED TWELVE OF THIS ARTICLE.

S 4. Paragraph (c) of subdivision 1 of section 754 of the family court act, as amended by section 4 of part V of chapter 383 of the laws of 2001, is amended to read as follows:

(c) Continuing the proceeding and placing the respondent in accord with section seven hundred fifty-six OF THIS PART; provided, however, that the court shall not place the respondent in accord with section seven hundred fifty-six OF THIS PART where the respondent is sixteen years of age or older, unless the court determines and states in its order that special circumstances exist to warrant such placement WHICH COULD INCLUDE PLACEMENT IN SUBSTANCE USE TREATMENT SERVICES AS DEFINED BY SUBDIVISION (L) OF SECTION SEVEN HUNDRED TWELVE OF THIS ARTICLE; or

S 5. Subdivisions (a) and (b) of section 756 of the family court act, subdivision (a) as amended by chapter 920 of the laws of 1982, paragraph (i) of subdivision (a) as amended by chapter 309 of the laws of 1996, the opening paragraph of paragraph (ii) of subdivision (a) as amended by section 11 of part G of chapter 58 of the laws of 2010 and subdivision (b) as amended by chapter 7 of the laws of 1999, are amended to read as follows:

(a) (i) For purposes of section seven hundred fifty-four OF THIS PART, the court may place the child in its own home or in the custody of a suitable relative or other suitable private person or a commissioner of social services OR IN A SUBSTANCE USE TREATMENT SERVICES PROGRAM AS DEFINED BY SUBDIVISION (L) OF SECTION SEVEN HUNDRED TWELVE OF THIS ARTICLE, subject to the orders of the court.

(ii) Where the child is placed with the commissioner of the local social services district, the court may direct the commissioner to place the child with an authorized agency or class of authorized agencies, including, if the court finds that the respondent is a sexually exploited child as defined in subdivision one of section four hundred forty-seven-a of the social services law, an available long-term safe house. Unless the dispositional order provides otherwise, the court so directing shall include one of the following alternatives to apply in the event that the commissioner is unable to so place the child:

(1) the commissioner shall apply to the court for an order to stay, modify, set aside, or vacate such directive pursuant to the provisions of section seven hundred sixty-two or seven hundred sixty-three OF THIS ARTICLE; or

(2) the commissioner shall return the child to the family court for a new dispositional hearing and order.

(III) WHERE THE CHILD IS PLACED IN A SUBSTANCE USE TREATMENT SERVICES PROGRAM, THE COURT MAY ORDER THE CHILD TO UNDERGO TREATMENT FOR A PERIOD NOT TO EXCEED SIXTY DAYS. IF THE COURT FINDS IT NECESSARY, IT MAY DIRECT THE COUNTY SHERIFF TO TAKE THE CHILD INTO CUSTODY AND DELIVER HIM OR HER TO THE SUBSTANCE USE TREATMENT SERVICES SPECIFIED IN THE COURT ORDER, OR TO THE NEAREST APPROPRIATE SUBSTANCE USE TREATMENT SERVICES PROGRAM FOR TREATMENT. THE COURT MAY EXTEND PLACEMENT BEYOND SIXTY DAYS, PURSUANT TO SECTION SEVEN HUNDRED FIFTY-SIX-B OF THIS PART.

(b) Placements under this section may be for an initial period of twelve months, EXCEPT WHEN PLACEMENT IS MADE PURSUANT TO PARAGRAPH (III) OF SUBDIVISION (A) OF THIS SECTION. The court may extend a placement

1 pursuant to section seven hundred fifty-six-a OR SECTION SEVEN HUNDRED  
2 FIFTY-SIX-B OF THIS PART. In its discretion, the court may recommend  
3 restitution or require services for public good pursuant to section  
4 seven hundred fifty-eight-a OF THIS PART in conjunction with an order of  
5 placement. For the purposes of calculating the initial period of place-  
6 ment, such placement shall be deemed to have commenced sixty days after  
7 the date the child was removed from his or her home in accordance with  
8 the provisions of this article. If the respondent has been in detention  
9 pending disposition, the initial period of placement ordered under this  
10 section shall be credited with and diminished by the amount of time  
11 spent by the respondent in detention prior to the commencement of the  
12 placement unless the court finds that all or part of such credit would  
13 not serve the best interests of the respondent.

14 S 6. The family court act is amended by adding a new section 756-b to  
15 read as follows:

16 S 756-B. EXTENSION OF PLACEMENT RELATED TO SUBSTANCE USE TREATMENT  
17 SERVICES. (A) WHENEVER A SUBSTANCE USE TREATMENT SERVICES PROVIDER  
18 BELIEVES THAT A CHILD WHO IS NEARING THE SCHEDULED DATE OF RELEASE FROM  
19 TREATMENT SERVICES CONTINUES TO NEED SUCH SERVICES, A PETITION FOR AN  
20 EXTENSION OF PLACEMENT SHALL BE FILED AT LEAST TEN DAYS BEFORE THE EXPI-  
21 RATION OF THE COURT-ORDERED TREATMENT PERIOD. THE COURT SHALL IMMEDIATE-  
22 LY SCHEDULE A HEARING TO BE HELD FIVE DAYS AFTER THE FILING OF THE PETI-  
23 TION. THE COURT SHALL PROVIDE A COPY OF THE PETITION FOR EXTENSION OF  
24 PLACEMENT AND THE NOTICE OF THE HEARING TO ALL PARTIES TO THE PROCEED-  
25 ING.

26 (B) IF THE COURT FINDS THAT THE PETITION FOR AN EXTENSION OF PLACEMENT  
27 SHOULD BE GRANTED, IT MAY ORDER THE CHILD TO UNDERGO SUBSTANCE USE  
28 TREATMENT SERVICES FOR A PERIOD NOT TO EXCEED AN ADDITIONAL NINETY DAYS.  
29 WHEN THE CONDITIONS JUSTIFYING SUBSTANCE USE TREATMENT SERVICES ARE NO  
30 LONGER NECESSARY, THE CHILD MUST BE RELEASED TO THE CUSTODY OF HIS OR  
31 HER PARENT OR OTHER PERSON LEGALLY RESPONSIBLE FOR HIS OR HER CARE.

32 (C) SUCCESSIVE EXTENSIONS OF PLACEMENT PURSUANT TO THIS SECTION MAY BE  
33 GRANTED, BUT UNDER NO CIRCUMSTANCES SHALL SUCH EXTENSION BE CONTINUED  
34 BEYOND THE CHILD'S EIGHTEENTH BIRTHDAY WITHOUT HIS OR HER CONSENT.

35 S 7. Section 764 of the family court act, as amended by chapter 920 of  
36 the laws of 1982, is amended to read as follows:

37 S 764. Petition to terminate placement. Any parent or [guardian]  
38 PERSON LEGALLY RESPONSIBLE FOR THE CHILD'S CARE or duly authorized agen-  
39 cy [or next friend of a person placed under section seven hundred  
40 fifty-six] may petition [to] the court for an order terminating the  
41 placement MADE PURSUANT TO SECTION SEVEN HUNDRED FIFTY-SIX OF THIS ARTI-  
42 CLE. The petition must be verified and must show:

43 (a) that an application for release of the respondent was made to the  
44 duly authorized agency OR THE SUBSTANCE USE TREATMENT SERVICES PROVIDER  
45 with which the child was placed;

46 (b) that the application was denied or was not granted within thirty  
47 days from the day application was made; and

48 (c) the grounds for the petition.

49 S 8. Section 765 of the family court act is amended to read as  
50 follows:

51 S 765. Service of petition; answer. A copy of a petition under section  
52 seven hundred sixty-four OF THIS PART shall be served promptly upon the  
53 duly authorized agency or the institution having custody of the person  
54 OR THE SUBSTANCE USE TREATMENT SERVICES PROVIDER, whose duty it is to  
55 file an answer to the petition within five days from the day of service.

1 S 9. Section 767 of the family court act, as amended by chapter 283 of  
2 the laws of 1977, is amended to read as follows:

3 S 767. Orders on hearing. (a) If the court determines after hearing  
4 that continued placement serves the purposes of this article, it shall  
5 deny the petition. The court may, on its own motion, reduce the duration  
6 of the placement, change the agency OR SUBSTANCE USE TREATMENT SERVICES  
7 PROVIDER in which the child is placed, or direct the agency OR SUBSTANCE  
8 USE TREATMENT SERVICES PROVIDER to make such other arrangements for the  
9 person's care and welfare as the facts of the case may require.

10 (b) If the court determines after hearing that continued placement  
11 does not serve the purposes of this article, the court shall discharge  
12 the person from the custody of the agency OR SUBSTANCE USE TREATMENT  
13 SERVICES PROVIDER and may place the person on probation or under the  
14 supervision of the court, EXCEPT THAT IF SUCH PERSON WAS DISCHARGED FROM  
15 A SUBSTANCE USE TREATMENT SERVICES PROGRAM, SUCH PERSON SHALL BE IMME-  
16 DIATELY RETURNED TO THE CUSTODY OF HIS OR HER PARENT OR OTHER PERSON  
17 LEGALLY RESPONSIBLE FOR HIS OR HER CARE.

18 S 10. This act shall take effect on the ninetieth day after it shall  
19 have become law. Effective immediately, any rules or regulations neces-  
20 sary for the implementation of this act on its effective date may be  
21 promulgated prior to such effective date.