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

4519

2013-2014 Regular Sessions

I N S E N A T E

April 5, 2013

Introduced by Sen. FELDER -- (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 transfers of juvenile delinquents placed by the family court in conjunction with a "close to home" initiative

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

Section 1. Subdivision 2 of section 355.1 of the family court act, as amended by section 8 of subpart A of part G of chapter 57 of the laws of 2012, is amended to read as follows:

2. An order issued under section 353.3, may, upon a showing of a substantial change of circumstances, be set aside, modified, vacated or terminated upon motion of the commissioner of social services or the office of children and family services with whom the respondent has been placed.

(a)(i) For a social services district that only has an approved plan to implement programs for juvenile delinquents placed in non-secure settings as part of an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law, beginning on the effective date of that plan, if the district determines that placement in a limited secure facility is appropriate and consistent with the need for protection of the community and the needs and best interests of the respondent placed into its care, the social services district shall file a petition to transfer the custody of the respondent to the office of children and family services, and shall provide a copy of such petition to such office, the respondent, the attorney for the respondent, THE PRESENTMENT AGENCY and the respondent's parent OR PARENTS or legal guardian OR GUARDIANS. THE COURT, AFTER NOTICE HAVING BEEN GIVEN, SHALL GIVE THE OFFICE, THE RESPONDENT AND HIS OR HER ATTORNEY AND THE PRESENTMENT AGENCY AN OPPORTUNITY TO BE HEARD

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

LBD09328-01-3

WITHIN THIRTY DAYS OR, IF THE RESPONDENT IS IN DETENTION PENDING SUCH MOTION, WITHIN TEN DAYS OF THE FILING OF THE PETITION, UNLESS UPON GOOD CAUSE THE PETITION MAY BE ADJOURNED FOR AN ADDITIONAL PERIOD NOT TO EXCEED TEN DAYS. The court shall render a decision whether the [juvenile delinquent] RESPONDENT should be transferred to the office within [seventy-two hours] TEN DAYS OF THE HEARING, excluding weekends and public holidays. The family court shall[, after allowing the office of children and family services and the attorney for the respondent, after notice having been given, an opportunity to be heard,] grant such a petition only if the court determines, and states in its written order, the reasons why a limited secure placement is necessary and consistent with the needs and best interests of the respondent and the need for protection of the community.

(ii) For a social services district with an approved plan or approved plans that cover juvenile delinquents placed in non-secure or in non-secure and in limited secure settings as part of an approved juvenile justice services close to home initiative pursuant to section four hundred four of the social services law, beginning on the effective date of the plan, if the district determines that a secure level of placement is appropriate and consistent with the need for protection of the community and the needs and best interests of the respondent placed into its care, the social services district shall file a petition to transfer the custody of the respondent to the office of children and family services, and shall provide a copy of such petition to such office, the respondent, the attorney for the respondent, THE PRESENTMENT AGENCY and the respondent's parent OR PARENTS or legal guardian OR GUARDIANS. THE COURT, AFTER NOTICE HAVING BEEN GIVEN, SHALL GIVE THE OFFICE, THE RESPONDENT AND HIS OR HER ATTORNEY AND THE PRESENTMENT AGENCY AN OPPORTUNITY TO BE HEARD WITHIN THIRTY DAYS OR, IF THE RESPONDENT IS IN DETENTION PENDING SUCH MOTION, WITHIN TEN DAYS OF THE FILING OF THE PETITION, UNLESS UPON GOOD CAUSE THE PETITION MAY BE ADJOURNED FOR AN ADDITIONAL PERIOD NOT TO EXCEED TEN DAYS. The court shall render a decision whether the youth should be transferred within [seventy-two hours] TEN DAYS OF THE HEARING, excluding weekends and public holidays. The family court shall[, after allowing the office of children and family services and the attorney for the respondent, after notice having been given, an opportunity to be heard,] grant such a petition only if the court determines, and states in its written order, that the youth needs a secure level of placement because:

(A) the respondent has been shown to be exceptionally dangerous to himself or herself or to other persons. Exceptionally dangerous behavior may include, but is not limited to, one or more serious intentional assaults, sexual assaults or setting fires; or

(B) the respondent has demonstrated by a pattern of behavior that he or she needs a more structured setting and the social services district has considered the appropriateness and availability of a transfer to an alternative non-secure or limited secure facility. Such behavior may include, but is not limited to: disruptions in facility programs; continuously and maliciously destroying property; or, repeatedly committing or inciting other youth to commit assaultive or destructive acts.

(iii) The court may order that the respondent be housed in a local secure detention facility on an interim basis pending its final ruling on the petition filed pursuant to this paragraph.

(b) The following provisions shall apply if the office of children and family services files a petition with a family court in a social services district with an approved juvenile justice services close to

home initiative pursuant to section four hundred four of the social services law to transfer, within the first ninety days that such plan is effective, to such district a respondent placed in the office's care pursuant to either section 353.3 or 353. 5 of this part:

(i) Such a petition shall be provided to the respondent, the attorney for the respondent, THE SOCIAL SERVICES DISTRICT, THE PRESENTMENT AGENCY and the respondent's parent or PARENTS OR legal guardian OR GUARDIANS. If the district only has an approved plan that covers juvenile delinquents placed in non-secure settings, the family court shall grant such a petition, without a hearing, unless the attorney for the respondent, after notice, objects to the transfer on the basis that the respondent needs to be placed with the office or the family court determines that there is insufficient information in the petition to grant the transfer without a hearing. The family court shall grant the petition ABSENT GOOD CAUSE AND unless the court determines, and states in its written order, the reasons why CONTINUED placement with the office is necessary and consistent with the needs and best interests of the respondent and the need for protection of the community.

(ii) If the district has an approved plan or approved plans that cover juvenile delinquents placed in non-secure and in limited secure settings, for the first ninety days that the plan that covers juvenile delinquents in limited secure settings is effective, the family court shall grant such a petition, without a hearing, unless the attorney for the respondent, after notice, objects to the transfer on the basis that the respondent needs to be placed with the office or the family court determines that there is insufficient information in the petition to grant the transfer without a hearing. The family court shall grant the petition ABSENT GOOD CAUSE AND unless the court determines, and states in its written order, the reasons why CONTINUED placement with the office is necessary and consistent with the needs and best interests of the respondent and the need for protection of the community.

(c) Beginning ninety-one days after the effective date a social services district's plan to implement programs for juvenile justice services close to home initiative pursuant to section four hundred four of the social services law, if the office of children and family services files a petition to transfer to such district a respondent placed in the office's care pursuant to either section 353.3 or 353.5 of this part from a family court in such a social services district, the office shall provide a copy of the petition to the social services district, the attorney for the respondent, THE RESPONDENT'S PARENT OR PARENTS OR LEGAL GUARDIAN OR GUARDIANS and the presentment agency.

(i) If the district only has an approved plan that covers juvenile delinquents placed in non-secure settings, the family court shall, after allowing the social services district, the attorney for the respondent and the presentment agency an opportunity to be heard, grant a petition filed pursuant to this subparagraph unless the court determines, and states in its written order, the reasons why a secure or limited secure placement is necessary and consistent with the needs and best interests of the respondent and the need for protection of the community.

(ii) If the district has an approved plan or approved plans that cover juvenile delinquents placed in non-secure and limited secure settings, beginning ninety-one days after the effective date of the plan that covers juvenile delinquents placed in limited secure settings, the family court, after allowing the social services district, the attorney for the respondent and the presentment agency an opportunity to be heard, shall grant a petition filed pursuant to this subparagraph, unless the

court determines, and states in its written order, the reasons why a secure placement is necessary and consistent with the needs and best interests of the respondent and the need for protection of the community.

S 2. This act shall take effect immediately; provided, however, the amendments to subdivision 2 of section 355.1 of the family court act made by section one of this act shall not affect the expiration and reversion of such subdivision and shall expire and be deemed repealed therewith.