

7652--A

I N S E N A T E

May 23, 2014

Introduced by Sens. MARTINS, BALL, BONACIC, BOYLE, CARLUCCI, FELDER, GALLIVAN, GOLDEN, GRIFFO, HANNON, LANZA, LARKIN, LITTLE, MARCELLINO, MARCHIONE, MAZIARZ, NOZZOLIO, O'MARA, RANZENHOFER, RITCHIE, ROBACH, SAVINO, SEWARD, VALESKY, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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1 nine-a of the social services law to avert the placement of the child
2 into foster care, including crisis intervention and respite services.
3 DIVERSION SERVICES MAY ALSO INCLUDE, IN CASES WHERE ANY PERSON IS SEEK-
4 ING TO FILE A PETITION THAT ALLEGES THAT THE CHILD HAS A SUBSTANCE USE
5 DISORDER OR IS IN NEED OF IMMEDIATE TREATMENT DUE TO A SUBSTANCE USE
6 DISORDER, AN ASSESSMENT FOR SUBSTANCE USE DISORDER.

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

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

16 (L) "SUBSTANCE USE TREATMENT SERVICES". SUBSTANCE USE TREATMENT
17 SERVICES SHALL INCLUDE PARTICIPATION IN AN AVAILABLE CHEMICAL DEPENDENCE
18 PROGRAM OR FACILITY ESTABLISHED IN ACCORDANCE WITH SECTIONS 19.09 AND
19 32.05 OF THE MENTAL HYGIENE LAW, AND ANY HOSPITAL AS DEFINED BY ARTICLE
20 TWENTY-EIGHT OF THE PUBLIC HEALTH LAW, THAT ADMITS PERSONS FOR SUBSTANCE
21 ABUSE TREATMENT.

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

25 (b) The designated lead agency shall:

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

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

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

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

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

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

48 3. Detention of a person alleged to be or adjudicated as a person in
49 need of supervision shall, except as provided in [subdivision] SUBDIVI-
50 SIONS four AND SIX of this section, be authorized only in a foster care
51 program certified by the office of children and family services, or a
52 certified or approved family boarding home, or a non-secure detention
53 facility certified by the office and in accordance with section seven
54 hundred thirty-nine of this article. The setting of the detention shall
55 take into account (a) the proximity to the community in which the person
56 alleged to be or adjudicated as a person in need of supervision lives

1 with such person's parents or to which such person will be discharged,
2 and (b) the existing educational setting of such person and the proximi-
3 ty of such setting to the location of the detention setting.

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

10 S 4. Paragraph (c) of subdivision 1 of section 754 of the family court
11 act, as amended by section 4 of part V of chapter 383 of the laws of
12 2001, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

51 (c) the grounds for the petition.

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

54 S 765. Service of petition; answer. A copy of a petition under section
55 seven hundred sixty-four OF THIS PART shall be served promptly upon the
56 duly authorized agency or the institution having custody of the person

1 OR THE SUBSTANCE USE TREATMENT SERVICES PROVIDER, whose duty it is to
2 file an answer to the petition within five days from the day of service.

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

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

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

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