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

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I N S E N A T E

May 17, 2016

Introduced by Sen. AVELLA -- (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:

Section 1. Paragraph (iii) of subdivision (d) and paragraph (ii) of subdivision (g) of section 735 of the family court act, as added by section 7 of part E of chapter 57 of the laws of 2005, are amended to read as follows:

(iii) where the entity seeking to file a petition is a school district or local educational agency OR WHERE THE PARENT OR OTHER POTENTIAL PETITIONER INDICATES THAT THE PROPOSED PETITION WILL INCLUDE TRUANCY AND/OR CONDUCT IN SCHOOL AS AN ALLEGATION, the designated lead agency shall review the steps taken by the school district or local educational agency to improve the youth's attendance and/or conduct in school and attempt to engage the school district or local educational agency in further diversion attempts, if it appears from review that such attempts will be beneficial to the youth. WHERE THE SCHOOL DISTRICT OR LOCAL EDUCATIONAL AGENCY IS NOT THE POTENTIAL PETITIONER, THE DESIGNATED LEAD AGENCY SHALL PROVIDE NOTICE TO IT OF ANY CONFERENCE WITH THE POTENTIAL PETITIONER IN ORDER TO ENABLE THE SCHOOL DISTRICT OR LOCAL EDUCATIONAL AGENCY TO ASSIST THE DESIGNATED LEAD AGENCY TO RESOLVE THE TRUANCY OR SCHOOL BEHAVIORAL PROBLEMS OF THE YOUTH SO AS TO OBVIATE THE NEED TO FILE A PETITION OR, AT MINIMUM, TO RESOLVE THE EDUCATION-RELATED ALLEGATIONS OF THE PROPOSED PETITION.

(ii) The clerk of the court shall accept a petition for filing only if it has attached thereto the following:

(A) if the potential petitioner is the parent or other person legally responsible for the youth, a notice from the designated lead agency indicating there is no bar to the filing of the petition as the poten-

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

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tial petitioner consented to and actively participated in diversion services; and

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

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

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

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

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

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

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

(A) in supplying the child with adequate food, clothing, shelter or education in accordance with the provisions of part one of article sixty-five of the education law, or medical, dental, optometrical or surgical care, though financially able to do so or offered financial or other reasonable means to do so , OR, IN THE CASE OF AN ALLEGED FAILURE OF THE RESPONDENT TO PROVIDE EDUCATION TO THE CHILD, NOTWITHSTANDING THE EFFORTS OF THE SCHOOL DISTRICT OR LOCAL EDUCATIONAL AGENCY AND CHILD

PROTECTIVE AGENCY TO AMELIORATE SUCH ALLEGED FAILURE PRIOR TO THE FILING OF THE PETITION; or

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

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

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

(G) WHERE THE PETITION FILED UNDER THIS ARTICLE CONTAINS AN ALLEGATION OF A FAILURE BY THE RESPONDENT TO PROVIDE EDUCATION TO THE CHILD IN ACCORDANCE WITH ARTICLE SIXTY-FIVE OF THE EDUCATION LAW, THE COURT SHALL CAUSE A COPY OF THE PETITION AND NOTICE OF THE TIME AND PLACE TO BE HEARD TO BE SENT TO THE SCHOOL DISTRICT OR LOCAL EDUCATIONAL AGENCY IDENTIFIED BY THE PETITIONER IN THE PETITION IN ACCORDANCE WITH SUBDIVISION (G) OF SECTION ONE THOUSAND THIRTY-ONE OF THIS ARTICLE. WHERE THE COURT DETERMINES THAT PARTICIPATION AND/OR ASSISTANCE WOULD AID IN THE RESOLUTION OF THE PETITION, SUCH SCHOOL DISTRICT OR LOCAL EDUCATIONAL AGENCY MAY BE JOINED BY THE COURT AS A NECESSARY PARTY AND MAY BE ASKED TO PROVIDE ASSISTANCE IN ACCORDANCE WITH SECTION TWO HUNDRED FIFTY-FIVE OF THIS ACT.

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