

3237

2015-2016 Regular Sessions

I N S E N A T E

February 3, 2015

Introduced by Sen. MARTINS -- 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 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. Subdivision 3 of section 720 of the family court act, as
2 amended by section 9 of subpart B of part Q of chapter 58 of the laws of
3 2011, is amended and a new subdivision 6 is added to read as follows:
4 3. Detention of a person alleged to be or adjudicated as a person in
5 need of supervision shall, except as provided in [subdivision] SUBDIVI-
6 SIONS four AND SIX of this section, be authorized only in a foster care
7 program certified by the office of children and family services, or a
8 certified or approved family boarding home, or a non-secure detention
9 facility certified by the office and in accordance with section seven
10 hundred thirty-nine of this article. The setting of the detention shall
11 take into account (a) the proximity to the community in which the person
12 alleged to be or adjudicated as a person in need of supervision lives
13 with such person's parents or to which such person will be discharged,
14 and (b) the existing educational setting of such person and the proximi-
15 ty of such setting to the location of the detention setting.
16 6. IF THE RESPONDENT IS ALLEGED TO BE OR ADJUDICATED AS A PERSON IN
17 NEED OF SUPERVISION DUE TO A SUBSTANCE USE DISORDER AS DEFINED BY SUBDI-
18 VISION (J) OF SECTION SEVEN HUNDRED TWELVE OF THIS ARTICLE, THE COURT
19 MAY DIRECT SUCH RESPONDENT TO ANY AVAILABLE SUBSTANCE USE DISORDER
20 SERVICE AS DEFINED BY SUBDIVISION (M) OF SECTION SEVEN HUNDRED TWELVE OF
21 THIS ARTICLE.
22 S 2. Paragraph (c) of subdivision 1 of section 754 of the family court
23 act, as amended by section 4 of part V of chapter 383 of the laws of
24 2001, is amended to read as follows:

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

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(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 DISORDER SERVICES AS DEFINED BY SUBDIVISION (M) OF SECTION SEVEN HUNDRED TWELVE OF THIS ARTICLE; or

S 3. 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 DISORDER SERVICES PROGRAM AS DEFINED BY SUBDIVISION (M) 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 DISORDER 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 DISORDER SERVICES SPECIFIED IN THE COURT ORDER, OR TO THE NEAREST APPROPRIATE SUBSTANCE USE DISORDER 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 pursuant to section seven hundred fifty-six-a OR SECTION SEVEN HUNDRED FIFTY-SIX-B OF THIS PART. In its discretion, the court may recommend restitution or require services for public good pursuant to section seven hundred fifty-eight-a OF THIS PART in conjunction with an order of placement. For the purposes of calculating the initial period of placement, such placement shall be deemed to have commenced sixty days after the date the child was removed from his or her home in accordance with the provisions of this article. If the respondent has been in detention pending disposition, the initial period of placement ordered under this

1 section shall be credited with and diminished by the amount of time
2 spent by the respondent in detention prior to the commencement of the
3 placement unless the court finds that all or part of such credit would
4 not serve the best interests of the respondent.

5 S 4. The family court act is amended by adding a new section 756-b to
6 read as follows:

7 S 756-B. EXTENSION OF PLACEMENT RELATED TO SUBSTANCE USE DISORDER
8 SERVICES. (A) WHENEVER A SUBSTANCE USE DISORDER SERVICES PROVIDER
9 BELIEVES THAT A CHILD WHO IS NEARING THE SCHEDULED DATE OF RELEASE FROM
10 DISORDER SERVICES CONTINUES TO NEED SUCH SERVICES, A PETITION FOR AN
11 EXTENSION OF PLACEMENT SHALL BE FILED AT LEAST TEN DAYS BEFORE THE EXPI-
12 RATION OF THE COURT-ORDERED TREATMENT PERIOD. THE COURT SHALL IMMEDIATE-
13 LY SCHEDULE A HEARING TO BE HELD FIVE DAYS AFTER THE FILING OF THE PETI-
14 TION. THE COURT SHALL PROVIDE A COPY OF THE PETITION FOR EXTENSION OF
15 PLACEMENT AND THE NOTICE OF THE HEARING TO ALL PARTIES TO THE PROCEED-
16 ING.

17 (B) IF THE COURT FINDS THAT THE PETITION FOR AN EXTENSION OF PLACEMENT
18 SHOULD BE GRANTED, IT MAY ORDER THE CHILD TO UNDERGO SUBSTANCE USE
19 DISORDER SERVICES FOR A PERIOD NOT TO EXCEED AN ADDITIONAL NINETY DAYS.
20 WHEN THE CONDITIONS JUSTIFYING SUBSTANCE USE DISORDER SERVICES ARE NO
21 LONGER NECESSARY, THE CHILD MUST BE RELEASED TO THE CUSTODY OF HIS OR
22 HER PARENT OR OTHER PERSON LEGALLY RESPONSIBLE FOR HIS OR HER CARE.

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

26 S 5. Section 764 of the family court act, as amended by chapter 920 of
27 the laws of 1982, is amended to read as follows:

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

34 (a) that an application for release of the respondent was made to the
35 duly authorized agency OR THE SUBSTANCE USE DISORDER SERVICES PROVIDER
36 with which the child was placed;

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

39 (c) the grounds for the petition.

40 S 6. Section 765 of the family court act is amended to read as
41 follows:

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

47 S 7. Section 767 of the family court act, as amended by chapter 283 of
48 the laws of 1977, is amended to read as follows:

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

1 (b) If the court determines after hearing that continued placement
2 does not serve the purposes of this article, the court shall discharge
3 the person from the custody of the agency OR SUBSTANCE USE DISORDER
4 SERVICES PROVIDER and may place the person on probation or under the
5 supervision of the court, EXCEPT THAT IF SUCH PERSON WAS DISCHARGED FROM
6 A SUBSTANCE USE DISORDER SERVICES PROGRAM, SUCH PERSON SHALL BE IMME-
7 DIATELY RETURNED TO THE CUSTODY OF HIS OR HER PARENT OR OTHER PERSON
8 LEGALLY RESPONSIBLE FOR HIS OR HER CARE.

9 S 8. This act shall take effect on the ninetieth day after it shall
10 have become law. Effective immediately, any rules or regulations neces-
11 sary for the implementation of this act on its effective date may be
12 promulgated prior to such effective date.