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

March 1, 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 domestic relations law, the family court act, the executive law and the social services law, in relation to the substitution of the term intellectual disability for the term mental retardation in family court proceedings

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

Section 1. Paragraph (d) of subdivision 2 of section 111 of the domestic relations law, as amended by chapter 911 of the laws of 1983, is amended to read as follows:

(d) who, by reason of mental illness or [mental retardation] INTELLECTUAL DISABILITY, as defined in subdivision six of section three hundred eighty-four-b of the social services law, is presently and for the foreseeable future unable to provide proper care for the child. The determination as to whether a parent is mentally ill or [mentally retarded] INTELLECTUALLY DISABLED shall be made in accordance with the criteria and procedures set forth in subdivision six of section three hundred eighty-four-b of the social services law; or

S 2. Paragraph (iv) of subdivision (a) of section 115 of the family court act, as amended by chapter 185 of the laws of 2006, is amended to read as follows:

(iv) proceedings to permanently terminate parental rights to guardianship and custody of a child: (A) by reason of permanent neglect, as set forth in part one of article six of this act and paragraph (d) of subdivision four of section three hundred eighty-four-b of the social services law, (B) by reason of mental illness, [mental retardation] INTELLECTUAL DISABILITY and severe or repeated child abuse, as set forth in paragraphs (c) and (e) of subdivision four of section three hundred eighty-four-b of the social services law, and (C) by reason of the death of one or both parents, where no guardian of the person of the child has been lawfully appointed, or by reason of abandonment of the child for a period of six months immediately prior to the filing of the petition,

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

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where a child is under the jurisdiction of the family court as a result of a placement in foster care by the family court pursuant to article ten or ten-A of this act or section three hundred fifty-eight-a of the social services law, unless the court declines jurisdiction pursuant to section three hundred eighty-four-b of the social services law;

S 3. Section 231 of the family court act, as added by chapter 853 of the laws of 1976, is amended to read as follows:

S 231. Jurisdiction over [mentally retarded] INTELLECTUALLY DISABLED children. If it shall appear to the court that any child within its jurisdiction is [mentally retarded] INTELLECTUALLY DISABLED, the court may cause such child to be examined as provided in the mental hygiene law and if found to be [mentally retarded] INTELLECTUALLY DISABLED as therein defined, may commit such child in accordance with the provisions of such law.

S 4. Subdivision 13 of section 301.2 of the family court act, as added by chapter 920 of the laws of 1982, is amended to read as follows:

13. "Incapacitated person" means a respondent who, as a result of mental illness, [mental retardation] OR INTELLECTUAL or developmental disability as defined in subdivisions twenty[, twenty-one] and twenty-two of section 1.03 of the mental hygiene law, lacks capacity to understand the proceedings against him or HER OR to assist in his OR HER own defense.

S 5. Subdivision 1 and paragraph (a) of subdivision 5 of section 322.2 of the family court act, as amended by chapter 41 of the laws of 2010, are amended to read as follows:

1. Upon the receipt of examination reports ordered under section 322.1 OF THIS ACT, the court shall conduct a hearing to determine whether the respondent is an incapacitated person. The respondent, the counsel for the respondent, the presentment agency and the commissioner of mental health or the commissioner of [mental retardation and] developmental disabilities, as appropriate, shall be notified of such hearing at least five days prior to the date thereof and afforded an opportunity to be heard.

(a) If the court finds that there is probable cause to believe that the respondent committed a felony, it shall order the respondent committed to the custody of the commissioner of mental health or the commissioner of [mental retardation and] developmental disabilities for an initial period not to exceed one year from the date of such order. Such period may be extended annually upon further application to the court by the commissioner having custody or his or her designee. Such application must be made not more than sixty days prior to the expiration of such period on forms that have been prescribed by the chief administrator of the courts. At that time, the commissioner must give written notice of the application to the respondent, the counsel representing the respondent and the mental hygiene legal service if the respondent is at a residential facility. Upon receipt of such application, the court must conduct a hearing to determine the issue of capacity. If, at the conclusion of a hearing conducted pursuant to this subdivision, the court finds that the respondent is no longer incapacitated, he or she shall be returned to the family court for further proceedings pursuant to this article. If the court is satisfied that the respondent continues to be incapacitated, the court shall authorize continued custody of the respondent by the commissioner for a period not to exceed one year. Such extensions shall not continue beyond a reasonable period of time necessary to determine whether the respondent will attain the capacity to

proceed to a fact finding hearing in the foreseeable future but in no event shall continue beyond the respondent's eighteenth birthday.

S 6. Subdivisions 1, 2 and 3 of section 353.4 of the family court act, subdivision 1 and paragraph (c) of subdivision 2 as amended by chapter 465 of the laws of 1992 and subdivisions 2 and 3 as added by chapter 920 of the laws of 1982, are amended to read as follows:

1. If at the conclusion of the dispositional hearing and in accordance with section 352.2 OF THIS ACT the court finds that the respondent has a mental illness, [mental retardation] OR INTELLECTUAL or developmental disability, as defined in section 1.03 of the mental hygiene law, which is likely to result in serious harm to himself or HERSELF OR others, the court may issue an order placing such respondent with the [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES or, with the consent of the local commissioner, with a local commissioner of social services. Any such order shall direct the temporary transfer for admission of the respondent to the custody of either the commissioner of mental health or the commissioner of [mental retardation and] developmental disabilities who shall arrange the admission of the respondent to the appropriate facility of the department of mental hygiene. The director of a hospital operated by the office of mental health may, subject to the provisions of section 9.51 of the mental hygiene law, transfer a person admitted to the hospital pursuant to this subdivision to a residential treatment facility for children and youth, as that term is defined in section 1.03 of the mental hygiene law, if care and treatment in such a facility would more appropriately meet the needs of the respondent. Persons temporarily transferred to such custody under this provision may be retained for care and treatment for a period of up to one year and whenever appropriate shall be transferred back to the [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES pursuant to the provisions of section five hundred nine of the executive law or transferred back to the local commissioner of social services. Within thirty days of such transfer back, application shall be made by the [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES or the local commissioner of social services to the placing court to conduct a further dispositional hearing at which the court may make any order authorized under section 352.2 OF THIS ACT, except that the period of any further order of disposition shall take into account the period of placement hereunder. Likelihood to result in serious harm shall mean (a) substantial risk of physical harm to himself OR HERSELF as manifested by threats or attempts at suicide or serious bodily harm or other conduct demonstrating he OR SHE is dangerous to himself or HERSELF OR (b) a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious bodily harm.

2. (a) Where the order of disposition is for a restrictive placement under section 353.5 OF THIS ACT if the court at the dispositional hearing finds that the respondent has a mental illness, [mental retardation] OR INTELLECTUAL or developmental disability, as defined in section 1.03 of the mental hygiene law, which is likely to result in serious harm to himself OR HERSELF or others, the court may, as part of the order of disposition, direct the temporary transfer, for a period of up to one year, of the respondent to the custody of the commissioner of mental health or of [mental retardation and] developmental disabilities who shall arrange for the admission of the respondent to an appropriate facility under his OR HER jurisdiction within thirty days of such order.

The director of the facility so designated by the commissioner shall accept such respondent for admission.

(b) Persons transferred to the office of mental health or [of mental retardation and] THE OFFICE FOR PEOPLE WITH developmental disabilities, pursuant to this subdivision, shall be retained by such office for care and treatment for the period designated by the court. At any time prior to the expiration of such period, if the director of the facility determines that the child is no longer mentally ill or no longer in need of active treatment, the responsible office shall make application to the family court for an order transferring the child back to the [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES. Not more than thirty days before the expiration of such period, there shall be a hearing, at which time the court may:

(i) extend the temporary transfer of the respondent for an additional period of up to one year to the custody of the commissioner of mental health or the commissioner of [mental retardation and] developmental disabilities pursuant to this subdivision; or

(ii) continue the restrictive placement of the respondent in the custody of the [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES.

(c) During such temporary transfer, the respondent shall continue to be under restrictive placement with the [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES. Whenever the respondent is transferred back to the [division] OFFICE OF CHILDREN AND FAMILY SERVICES the conditions of the placement as set forth in section 353.5 shall apply. Time spent by the respondent in the custody of the commissioner of mental health or the commissioner of [mental retardation and] developmental disabilities shall be credited and applied towards the period of placement.

3. No dispositional hearing at which proof of a mental disability as defined in section 1.03 of the mental hygiene law is to be offered shall be completed until the commissioner of mental health or commissioner of [mental retardation and] developmental disabilities, as appropriate, have been notified and afforded an opportunity to be heard at such dispositional hearing.

S 7. Subdivision 4 of section 380.1 of the family court act, as added by chapter 7 of the laws of 2007, is amended to read as follows:

4. Notwithstanding any other provision of law, where a finding of juvenile delinquency has been entered, upon request, the records pertaining to such case shall be made available to the commissioner of mental health or the commissioner of [mental retardation and] developmental disabilities, as appropriate; the case review panel; and the attorney general pursuant to section 10.05 of the mental hygiene law.

S 8. Subdivision 9 of section 508 of the executive law, as amended by chapter 7 of the laws of 2007, is amended to read as follows:

9. Notwithstanding any provision of law, including section five hundred one-c of this article, the office of children and family services shall make records pertaining to a person convicted of a sex offense as defined in subdivision (p) of section 10.03 of the mental hygiene law available upon request to the commissioner of mental health or the commissioner of [mental retardation and] developmental disabilities, as appropriate; a case review panel; and the attorney general; in accordance with the provisions of article ten of the mental hygiene law.

S 9. Paragraph (b) of subdivision 1 and subdivision 4 of section 509 of the executive law, paragraph (b) of subdivision 1 as amended by chap-

ter 511 of the laws of 1978 and subdivision 4 as amended by chapter 316 of the laws of 1983, are amended to read as follows:

(b) The office [of mental retardation and] FOR PEOPLE WITH developmental disabilities may receive, treat and otherwise care for such a child pursuant to article nine or fifteen of the mental hygiene law if suitable for admission thereunder.

4. Whenever the commissioner of mental health or the director of a residential treatment facility for children and youth, or the commissioner of [mental retardation and] developmental disabilities finds that care and treatment of a child transferred pursuant to this section or section 353.4 of the family court act is no longer suitable under the mental hygiene law, he OR SHE shall forthwith so certify and discharge the child to the custody of the child himself OR HERSELF, his OR HER parents, his OR HER legal guardian, [his] THE local department of social services or the [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES, as appropriate, except that so long as there is a valid order of the family court placing the child with the [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES, or a valid order of a criminal court sentencing a child to the [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES, the child shall be returned to the care and custody of the [division] OFFICE OF CHILDREN AND FAMILY SERVICES. The duration of the placement or sentence with the [division] SUCH OFFICE of a child transferred pursuant to this section shall not be extended or increased by reason of any such transfer.

S 10. Paragraph (c) of subdivision 4 and paragraph (b) of subdivision 6 of section 384-b of the social services law, paragraph (c) of subdivision 4 as amended by chapter 284 of the laws of 1981 and paragraph (b) of subdivision 6 as added by chapter 666 of the laws of 1976, are amended to read as follows:

(c) The parent or parents, whose consent to the adoption of the child would otherwise be required in accordance with section one hundred eleven of the domestic relations law, are presently and for the foreseeable future unable, by reason of mental illness or [mental retardation] INTELLECTUAL DISABILITY, to provide proper and adequate care for a child who has been in the care of an authorized agency for the period of one year immediately prior to the date on which the petition is filed in the court; or

(b) For the purposes of this section, ["mental retardation"] "INTELLECTUAL DISABILITY" means subaverage intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior to such an extent that if such child were placed in or returned to the custody of the parent, the child would be in danger of becoming a neglected child as defined in the family court act; PROVIDED, HOWEVER, THAT CASE LAW REGARDING USE OF THE PHRASE "MENTAL RETARDATION" UNDER THIS SECTION SHALL BE APPLICABLE TO THE TERM "INTELLECTUAL DISABILITY".

S 11. Subparagraph (n) of paragraph (A) of subdivision 4 of section 422 of the social services law, as amended by chapter 12 of the laws of 1996, is amended to read as follows:

(n) chief executive officers of authorized agencies, directors of day care centers and directors of facilities operated or supervised by the department of education, the [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES, the office of mental health or the office [of mental retardation and] FOR PEOPLE WITH developmental disabilities, in connection with a disciplinary investigation, action, or administrative or judicial proceeding instituted by any of such officers or directors

against an employee of any such agency, center or facility who is the subject of an indicated report when the incident of abuse or maltreatment contained in the report occurred in the agency, center, facility or program, and the purpose of such proceeding is to determine whether the employee should be retained or discharged; provided, however, a person given access to information pursuant to this subparagraph [(n)] shall, notwithstanding any inconsistent provision of law, be authorized to redisclose such information only if the purpose of such redisclosure is to initiate or present evidence in a disciplinary, administrative or judicial proceeding concerning the continued employment or the terms of employment of an employee of such agency, center or facility who has been named as a subject of an indicated report and, in addition, a person or agency given access to information pursuant to this subparagraph [(n)] shall also be given information not otherwise provided concerning the subject of an indicated report where the commission of an act or acts by such subject has been determined in proceedings pursuant to article ten of the family court act to constitute abuse or neglect;

S 12. The closing paragraph of section 424 of the social services law, as amended by chapter 634 of the laws of 1988, is amended to read as follows:

The provisions of this section shall not apply to a child protective service with respect to reports involving children [in facilities or programs subject to the provisions of subdivision eleven of section four hundred twenty-two of this title or reports involving children] in homes operated or supervised by the [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES, the office of mental health, or the office of [mental retardation and] PEOPLE WITH developmental disabilities subject to the provisions of section four hundred twenty-four-b of this title.

S 13. This act shall take effect immediately.