

# STATE OF NEW YORK

10141

## IN ASSEMBLY

March 12, 2020

Introduced by M. of A. SIMOTAS -- read once and referred to the Committee on Children and Families

AN ACT to amend the family court act, in relation to eliminating the use of the term incorrigible

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivisions (a) and (c) of section 712 of the family court  
2 act, as amended by section 1 of part K of chapter 56 of the laws of  
3 2019, are amended to read as follows:

4 (a) "Person in need of supervision". A person less than eighteen years  
5 of age: (i) who does not attend school in accordance with the provisions  
6 of part one of article sixty-five of the education law; (ii) who is  
7 [~~incorrigible,~~] ungovernable or habitually disobedient and beyond the  
8 lawful control of a parent or other person legally responsible for such  
9 child's care, or other lawful authority; (iii) who violates the  
10 provisions of: (1) section 221.05; or (2) 230.00 of the penal law; (iv)  
11 or who appears to be a sexually exploited child as defined in paragraph  
12 (a), (c) or (d) of subdivision one of section four hundred forty-seven-a  
13 of the social services law, but only if the child consents to the filing  
14 of a petition under this article.

15 (c) "Fact-finding hearing". A hearing to determine whether the  
16 respondent did the acts alleged to show that he or she violated a law or  
17 is [~~incorrigible,~~] ungovernable or habitually disobedient and beyond the  
18 control of his or her parents, guardian or legal custodian.

19 § 2. Paragraph (i) of subdivision (a) of section 732 of the family  
20 court act, as amended by section 9 of part G of chapter 58 of the laws  
21 of 2010, is amended to read as follows:

22 (i) the respondent is an habitual truant or is [~~incorrigible,~~] ungo-  
23 vernable[~~7~~] or habitually disobedient and beyond the lawful control of  
24 his or her parents, guardian or lawful custodian, or has been the victim  
25 of sexual exploitation as defined in subdivision one of section four  
26 hundred forty-seven-a of the social services law, and specifying the  
27 acts on which the allegations are based and the time and place they  
28 allegedly occurred. Where habitual truancy is alleged or the petitioner

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

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1 is a school district or local educational agency, the petition shall  
2 also include the steps taken by the responsible school district or local  
3 educational agency to improve the school attendance and/or conduct of  
4 the respondent;

5 § 3. Section 773 of the family court act, as amended by chapter 920 of  
6 the laws of 1982, is amended to read as follows:

7 § 773. Petition for transfer [~~for incorrigibility~~]. Any institution,  
8 society or agency in which a person was placed under section seven  
9 hundred fifty-six of this article may petition to the court which made  
10 the order of placement for transfer of that person to a society or agen-  
11 cy, governed or controlled by persons of the same religious faith or  
12 persuasion as that of the child, where practicable, or, if not practica-  
13 ble, to some other suitable institution, or to some other suitable  
14 institution on the ground that [~~such person~~]

15 (a) [~~is incorrigible and that his or her~~] the presence of such person  
16 is seriously detrimental to the welfare of the applicant institution,  
17 society, agency or other persons in its care, or

18 (b) after placement by the court, such person was released on parole  
19 or probation from such institution, society or agency and a term or  
20 condition of the release was willfully violated. The petition shall be  
21 verified by an officer of the applicant institution, society or agency  
22 and shall specify the act or acts bringing the person within this  
23 section.

24 § 4. Subdivision (h) of section 1012 of the family court act, as added  
25 by chapter 1015 of the laws of 1972, is amended to read as follows:

26 (h) "Impairment of emotional health" and "impairment of mental or  
27 emotional condition" includes a state of substantially diminished  
28 psychological or intellectual functioning in relation to, but not limit-  
29 ed to, such factors as failure to thrive, control of aggressive or self-  
30 destructive impulses, ability to think and reason, or acting out or  
31 misbehavior, including [~~incorrigibility,~~] ungovernability or habitual  
32 truancy; provided, however, that such impairment must be clearly attrib-  
33 utable to the unwillingness or inability of the respondent to exercise a  
34 minimum degree of care toward the child.

35 § 5. This act shall take effect immediately.