

STATE OF NEW YORK

2335

2019-2020 Regular Sessions

IN ASSEMBLY

January 22, 2019

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

AN ACT to amend the family court act, in relation to probation, investigation and diagnostic assessment of juvenile delinquents or any other juvenile delinquent whom the court reasonably finds, on the record, to have a demonstrable need for a remediation of a discernible handicapping condition

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

1 Section 1. Subdivision 1 of section 351.1 of the family court act, as
2 amended by chapter 398 of the laws of 1983, is amended to read as
3 follows:

4 1. Following a determination that a respondent has committed a desig-
5 nated felony act or any other juvenile delinquent whom the court reason-
6 ably finds, on the record, to have a demonstrable need for a remediation
7 of a discernible handicapping condition and prior to the dispositional
8 hearing, the judge shall order a probation investigation and a diagnos-
9 tic assessment. For the purposes of this article, the probation investi-
10 gation shall include, but not be limited to, the history of the juvenile
11 including previous conduct, the family situation, any previous psycho-
12 logical and psychiatric reports, school adjustment, previous social
13 assistance provided by voluntary or public agencies and the response of
14 the juvenile to such assistance. For the purposes of this article, the
15 diagnostic assessment shall include, but not be limited to, psycholog-
16 ical tests and psychiatric interviews to determine mental capacity and
17 achievement, emotional stability and mental disabilities. It shall
18 include a clinical assessment of the situational factors that may have
19 contributed to the act or acts. When feasible, expert opinion shall be
20 rendered as to the risk presented by the juvenile to others or himself,
21 with a recommendation as to the need for a restrictive placement.

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

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1 § 2. Subdivision 3 of section 351.1 of the family court act, as added
2 by chapter 920 of the laws of 1982, is amended to read as follows:

3 3. A child shall not be placed in accord with section 353.3 unless the
4 court has ordered a probation investigation prior to the dispositional
5 hearing; a child shall not be placed in accord with section 353.4 unless
6 the court has ordered a diagnostic assessment prior to such hearing. The
7 diagnostic assessment shall be completed by an interdisciplinary team
8 consisting of, but not limited to, a psychologist, a social worker, a
9 special educator, a physician, and a law guardian and/or legal counsel.

10 § 3. Subdivisions 1 and 4 of section 353.4 of the family court act,
11 subdivision 1 as amended by chapter 37 of the laws of 2016 and subdivi-
12 sion 4 as added by chapter 920 of the laws of 1982, are amended to read
13 as follows:

14 1. If at the conclusion of the dispositional hearing and in accordance
15 with section 352.2 of this act the court finds that the respondent has a
16 mental illness, or intellectual or developmental disability, as defined
17 in section 1.03 of the mental hygiene law, which is likely to result in
18 serious harm to himself or herself or others, the court may issue an
19 order placing such respondent with the office of children and family
20 services or, with the consent of the local commissioner, with a local
21 commissioner of social services, or the commissioner of mental health or
22 the commissioner of developmental disabilities consistent with placement
23 provisions as outlined in chapter seven hundred fifty-seven of the laws
24 of nineteen hundred seventy-seven, chapter five hundred sixty-three of
25 the laws of nineteen hundred eighty and article eighty-one of the educa-
26 tion law, and/or any voluntary or not-for-profit agency licensed under
27 these provisions of law not inconsistent with the rules and regulations
28 governing the placement of clients. Any such order shall direct the
29 temporary transfer for admission of the respondent to the custody of
30 either the commissioner of mental health or the commissioner of develop-
31 mental disabilities who shall arrange the admission of the respondent to
32 the appropriate facility of the department of mental hygiene. The direc-
33 tor of a hospital operated by the office of mental health may, subject
34 to the provisions of section 9.51 of the mental hygiene law, transfer a
35 person admitted to the hospital pursuant to this subdivision to a resi-
36 dential treatment facility for children and youth, as that term is
37 defined in section 1.03 of the mental hygiene law, if care and treatment
38 in such a facility would more appropriately meet the needs of the
39 respondent. Persons temporarily transferred to such custody under this
40 provision may be retained for care and treatment for a period of up to
41 one year and whenever appropriate shall be transferred back to the
42 office of children and family services pursuant to the provisions of
43 section five hundred nine of the executive law or transferred back to
44 the local commissioner of social services. Within thirty days of such
45 transfer back, application shall be made by the office of children and
46 family services or the local commissioner of social services to the
47 placing court to conduct a further dispositional hearing at which the
48 court may make any order authorized under section 352.2 of this act,
49 except that the period of any further order of disposition shall take
50 into account the period of placement hereunder. Likelihood to result in
51 serious harm shall mean (a) substantial risk of physical harm to himself
52 or herself as manifested by threats or attempts at suicide or serious
53 bodily harm or other conduct demonstrating he or she is dangerous to
54 himself or herself or (b) a substantial risk of physical harm to other
55 persons as manifested by homicidal or other violent behavior by which
56 others are placed in reasonable fear of serious bodily harm.

1 4. No order of disposition placing the respondent in accordance with
2 this section shall be entered except upon clear and convincing evidence
3 which shall include the testimony of [~~two examining physicians as~~
4 ~~provided in section two hundred fifty-one~~] the interdisciplinary team
5 established in subdivision three of section 351.1 of this part.

6 § 4. This act shall take effect on the first of November next succeed-
7 ing the date on which it shall have become a law.