# 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:**

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

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

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

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

(i) the respondent is an habitual truant or is [~~incorrigible,~~] ungovernable[~~,~~] or habitually disobedient and beyond the lawful control of his or her parents, guardian or lawful custodian, or has been the victim of sexual exploitation as defined in subdivision one of section four hundred forty-seven-a of the social services law, and specifying the acts on which the allegations are based and the time and place they 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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is a school district or local educational agency, the petition shall also include the steps taken by the responsible school district or local educational agency to improve the school attendance and/or conduct of the respondent;

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

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

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

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

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

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

§ 5. This act shall take effect immediately.