§ 735. Preliminary procedure; diversion services. (a) Each county and any city having a population of one million or more shall offer diversion services as defined in section seven hundred twelve of this article to youth who are at risk of being the subject of a person in need of supervision petition. Such services shall be designed to provide an immediate response to families in crisis, to identify and utilize appropriate alternatives to placement and to divert youth from being the subject of a petition in family court. Each county and such city shall designate either the local social services district or the probation department as lead agency for the purposes of providing diversion services.

(b) The designated lead agency shall:

(i) confer with any person seeking to file a petition, the youth who may be a potential respondent, his or her family, and other interested persons, concerning the provision of diversion services before any petition may be filed; and

(ii) diligently attempt to prevent the filing of a petition under this article or, after the petition is filed, to prevent the placement of the youth into foster care; and

(iii) assess whether the youth would benefit from residential respite services; and

(iv) assess whether the youth is a sexually exploited child as defined in section four hundred forty-seven-a of the social services law and, if so, whether such youth should be referred to a safe house in accordance with section seven hundred thirty-nine of this part; and

(v) determine whether alternatives to placement or services provided pursuant to this section are appropriate to avoid remand of the youth to such placement; and

(vi) determine whether an assessment of the youth for substance use disorder by an office of alcoholism and substance abuse services certified provider is necessary when a person seeking to file a petition alleges in such petition that the youth is suffering from a substance use disorder which could make the youth a danger to himself or herself or others. Provided, however, that notwithstanding any other provision of law to the contrary, the designated lead agency shall not be required to pay for all or any portion of the costs of such assessment or for any substance use disorder or detoxification services, except in cases where

medical assistance for needy persons may be used to pay for all or any portion of the costs of such assessment or services. The office of alcoholism and substance abuse services shall make a list of its certified providers available to the designated lead agency.

(c) Any person or agency seeking to file a petition pursuant to this article which does not have attached thereto the documentation required by subdivision (g) of this section shall be referred by the clerk of the court to the designated lead agency which shall schedule and hold, on reasonable notice to the potential petitioner, the youth and his or her parent or other person legally responsible for his or her care, at least one conference in order to determine the factual circumstances and determine whether the youth and his or her family should receive diversion services pursuant to this section. Diversion services shall include clearly documented diligent attempts to provide appropriate services to the youth and his or her family unless it is determined that there is no substantial likelihood that the youth and his or her family will benefit from further diversion attempts. Notwithstanding the provisions of section two hundred sixteen-c of this act, the clerk shall not accept for filing under this part any petition that does not have attached thereto the documentation required by subdivision (g) of this section.

(d) Diversion services shall include documented diligent attempts to engage the youth and his or her family in appropriately targeted community-based services, but shall not be limited to:

(i) providing, at the first contact, information on the availability of or a referral to services in the geographic area where the youth and his or her family are located that may be of benefit in avoiding the need to file a petition under this article; including the availability, for up to twenty-one days, of a residential respite program, if the youth and his or her parent or other person legally responsible for his or her care agree, and the availability of other non-residential crisis intervention programs such as family crisis counseling or alternative dispute resolution programs or an educational program as defined in section four hundred fifty-eight-l of the social services law.

(ii) scheduling and holding at least one conference with the youth and his or her family and the person or representatives of the entity seeking to file a petition under this article concerning alternatives to

filing a petition and services that are available. Diversion services shall include clearly documented diligent attempts to provide appropriate services to the youth and his or her family before it may be determined that there is no substantial likelihood that the youth and his or her family will benefit from further attempts.

(iii) where the entity seeking to file a petition is a school district or local educational agency or where the parent or other potential petitioner indicates that the proposed petition will include truancy and/or conduct in school as an allegation, the designated lead agency shall review the steps taken by the school district or local educational agency to improve the youth's attendance and/or conduct in school and attempt to engage the school district or local educational agency in further diversion attempts, if it appears from review that such attempts will be beneficial to the youth. Where the school district or local educational agency is not the potential petitioner, the designated lead agency shall contact such district or agency to resolve the truancy or school behavioral problems of the youth in order to obviate the need to file a petition or, at minimum, to remediate the education-related allegations of the proposed petition.

(e) The designated lead agency shall maintain a written record with respect to each youth and his or her family for whom it considers providing or provides diversion services pursuant to this section. The record shall be made available to the court at or prior to the initial appearance of the youth in any proceeding initiated pursuant to this article.

(f) Efforts to prevent the filing of a petition pursuant to this section may extend until the designated lead agency determines that there is no substantial likelihood that the youth and his or her family will benefit from further attempts. Efforts at diversion pursuant to this section may continue after the filing of a petition where the designated lead agency determines that the youth and his or her family will benefit from further attempts to prevent the youth from entering foster care.

(g) (i) The designated lead agency shall promptly give written notice to the potential petitioner whenever attempts to prevent the filing of a petition have terminated, and shall indicate in such notice whether efforts were successful. The notice shall also detail the diligent

attempts made to divert the case if a determination has been made that there is no substantial likelihood that the youth will benefit from further attempts. No persons in need of supervision petition may be filed pursuant to this article during the period the designated lead agency is providing diversion services. A finding by the designated lead agency that the case has been successfully diverted shall constitute presumptive evidence that the underlying allegations have been successfully resolved in any petition based upon the same factual allegations. No petition may be filed pursuant to this article by the parent or other person legally responsible for the youth where diversion services have been terminated because of the failure of the parent or other person legally responsible for the youth to consent to or actively participate.

(ii) The clerk of the court shall accept a petition for filing only if it has attached thereto the following:

(A) if the potential petitioner is the parent or other person legally responsible for the youth, a notice from the designated lead agency indicating there is no bar to the filing of the petition as the potential petitioner consented to and actively participated in diversion services; and

(B) a notice from the designated lead agency stating that it has terminated diversion services because it has determined that there is no substantial likelihood that the youth and his or her family will benefit from further attempts, and that the case has not been successfully diverted; and

(C) where the proposed petition contains allegations of truancy and/or school misbehavior, whether or not the school district or local educational agency is the proposed petitioner, a notice from the designated lead agency regarding the diversion efforts undertaken and/or services provided by the designated lead agency and/or by the school district or local educational agency to the youth and the grounds for concluding that the education-related allegations could not be resolved absent the filing of a petition under this article.

(h) No statement made to the designated lead agency or to any agency or organization to which the potential respondent has been referred, prior to the filing of the petition, or if the petition has been filed, prior to the time the respondent has been notified that attempts at

diversion will not be made or have been terminated, or prior to the commencement of a fact-finding hearing if attempts at diversion have not terminated previously, may be admitted into evidence at a fact-finding hearing or, if the proceeding is transferred to a criminal court, at any time prior to a conviction.