

CHINS Reform

Front end

NY:

§ 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 detention 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.

LEAD AGENCY MISSION

(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) determine whether alternatives to detention are appropriate to avoid remand of the youth to detention.

COURT REJECTS AND SENDS TO DESIGNATED AGENCY IF THEY CAN'T PROVE THEY HAVE BEEN ALREADY

(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.

(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.

SCHOOL (HERE WE WANT A DOE APPROVED TRUANCY PREVENTION PROGRAM - NY the D Agency reviews efforts)

(iii) where the entity seeking to file a petition is a school district or local educational agency, 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.

WRITTEN RECORD OF DIVERSION

(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.

DURATION OF DIVERSION

(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.

NOTICE OF ENDING DIVERSION

(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.

PROOF OF DIVERSION EFFORT

(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.

NON DISCLOSURE OF ANY STMTS DURING DIVERSION

(h) No statement made to the designated lead agency or to any agency or organization to which the potential respondent, 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.

ILL diversion:

(705 ILCS 405/3-5) (from Ch. 37, par. 803-5)

Sec. 3-5. Interim crisis intervention services.

(a) Any minor who is taken into limited custody, or who independently requests or is referred for assistance, may be provided crisis intervention services by an agency or association, as defined in this Act, provided the association or agency staff

- (i) immediately investigate the circumstances of the minor and the facts surrounding the minor being taken into custody and promptly explain these facts and circumstances to the minor, and
- (ii) make a reasonable effort to inform the minor's parent, guardian or custodian of the fact that the minor has been taken into limited custody and where the minor is being kept, and
- (iii) if the minor consents, make a reasonable effort to transport, arrange for the transportation of, or otherwise release the minor to the parent, guardian or custodian.

Upon release of the child who is believed to need or benefit from medical, psychological, psychiatric or social services, the association or agency may inform the minor and the person to whom the minor is released of the nature and location of appropriate services and shall, if requested, assist in establishing contact between the family and other associations or agencies providing such services.

If the agency or association is unable by all reasonable efforts to contact a parent, guardian or custodian, or if the person contacted lives an unreasonable distance away, or if the minor refuses to be taken to his or her home or other appropriate residence, or if the agency or association is otherwise unable despite all reasonable efforts to make arrangements for the safe return of the minor, the minor may be taken to a temporary living arrangement which is in compliance with the Child Care Act of 1969 or which is with persons agreed to by the parents and the agency or association.

TEMPORARY SHELTER _ THOW AWAYS ARE C&P

(b) An agency or association is authorized to permit a minor to be sheltered in a temporary living arrangement provided the agency seeks to effect the minor's return home or alternative living arrangements agreeable to the minor and the parent, guardian or custodian as soon as practicable. If the parent, guardian or custodian refuses to permit the minor to return home, and no other living arrangement agreeable to the minor and the parent, guardian, or custodian can be made, the agency shall file a petition alleging that the minor is neglected or abused as described in Section 2-3 of this Act.

No minor shall be sheltered in a temporary living arrangement for more than 48 hours, excluding Saturdays, Sundays and court-designated holidays, without parental consent unless the agency documents its unsuccessful efforts to contact a parent or guardian, including recording the date and time and staff involved in all telephone calls, telegrams, letters, and personal contacts to obtain the consent or authority, in which case the minor may be so sheltered for not more than 21 days.

(c) Any agency or association or employee thereof acting reasonably and in good faith in the care of a minor being provided interim crisis intervention services and shelter care shall be immune from any civil or criminal liability resulting from such care.

(Source: P.A. 85-601.)

Alternative voluntary placement

Parent and child agree to placement or child goes home or file CHINS 405/3-6

Temporary Custody (not limited) 405/3-7

Officer thinks CHINS, Escaped commitment, in need of health care in public place, danger to self or others

Not arrest, no record no jail

Ill rules about what to do when an officer picks up a child with or without a warrant (405/3-8, 9,10,11)

Go to court or release w/ 48 Hrs 405/3-11

“Shelter care hearings” n 405 3/12

Parents have right to counsel

Purpose:

NY – to provide due process of law for considering a claim that a person is in need of supervision and for devising an appropriate order of disposition for one so adjudicated

Definitions

IL – boys and girls in need of authoritative intervention 705 ILCS 405/3-1

Offenses:

(also change school age?)

NY diversion services Servicea provided to c&f pursuant to s. 735 for purpose of avoiding need to file petition ordering detention. SHALL include:”efforts to adjust cases”?

Jurisdiction :

Juvenile court – how about district

See NY 714 re: age determination

Court has power to ‘substitute ‘ C&A

Venue

Where acts originated – can it transfer – who can transfer (parent, court?)

IL 3-2 Ct can transfer to county of minors residence

Runaway

NY return to parent unless just cause for running (718)

Detention provisions

NY 720

§ 720. Detention.

1. No child to whom the provisions of this article may apply, shall be detained in any prison, jail, lockup, or other place used for adults convicted of crime or under arrest and charged with a crime.

2. The detention of a child in a secure detention facility shall not be directed under any of the provisions of this article.

3. Detention of a person alleged to be or adjudicated as a person in need of supervision shall be authorized only in a detention facility certified by the division for youth except as provided in subdivision four of this section.

4. Whenever detention is authorized and ordered pursuant to this article, for a person alleged to be or adjudicated as a person in need of supervision, a family court in a city having a population of one million or more shall, notwithstanding any other provision of law, direct detention in a foster care facility established and maintained pursuant to the social services law. In all other respects, the detention of such a person in a foster care facility shall be subject to the identical terms and conditions for detention as are set forth in this article and in section two hundred thirty-five of this act.

5. (a) The court shall not order or direct detention under this article, unless the court determines that there is no substantial likelihood that the youth and his or her family will continue to benefit from diversion services and that all available alternatives to detention have been exhausted; and

(b) Where the youth is sixteen years of age or older, the court shall not order or direct detention under this article, unless the court determines and states in its order that special circumstances exist to warrant such detention.

Release of detention 739

§ 739. Release or detention after filing of petition and prior to order of disposition.

(a) After the filing of a petition under section seven hundred thirty-two of this article, the court in its discretion may release the respondent or direct his or her detention.

However, the court shall not direct detention unless it finds and states the facts and reasons for so finding that unless the respondent is detained there is a substantial probability that the respondent will not appear in court on the return date and all available alternatives to detention have been exhausted.

(b) Unless the respondent waives a determination that probable cause exists to believe that he is a person in need of supervision, no detention under this section may last more than three days

(i) unless the court finds, pursuant to the evidentiary standards applicable to a hearing on a felony complaint in a criminal court, that such probable cause exists, or

(ii) unless special circumstances exist, in which cases such detention may be extended not more than an additional three days exclusive of Saturdays, Sundays and public holidays.

(c) Upon a finding of facts and reasons which support a detention order pursuant to subdivision (a) of this section, the court shall also determine and state in any order directing detention:

(i) whether continuation of the respondent in the respondent's home would be contrary to the best interests of the respondent based upon, and limited to, the facts and circumstance available to the court at the time of the court's determination in accordance with this section; and

(ii) where appropriate, whether reasonable efforts were made prior to the date of the court order directing detention in accordance with this section, to prevent or eliminate the need for removal of the respondent from his or her home or, if the respondent had been removed from his or her home prior to the court appearance pursuant to this section, where appropriate, whether reasonable efforts were made to make it possible for the respondent to safely return home

NY provisions re taking into custody – inform parents, go to ‘designated lead agency, or go to court or to ‘questioning facility

Ny 739 detention

IL Detention – limited custody 405 /3-4

Runaway or out of control youth may be taken w/o warrant.

Return to parent or to agency for crisis intervention or mental health facility for screening (or if none then to ct and probation)

6 Hours max after contact with police

Taking into limited custody is not an arrest or police record. Records kept separate.

Immunity to officers

CT Enforcement power:

If no show after written promise then summons to child and adult or warrant to either (ny 725, 738)

Length of detention prior to hearing

NY 72 hrs or next day if in session

Conditions of continued detention at preliminary hearing: written findings – no more benefit from diversion, home is not in best interests of child

Beginning the formal petition process

Petition must allege:

Offense (acts, time and place)

- steps taken by petitioner – (e.g. school steps)

- age
- completion of front end services and maybe other probation services –

Who may file:

Police

Parent or guardian?

(NY person injured by activity or witness of it 733)

school

front end agency

(NY – ‘presentment agency’ that agreed to substitute chins for jd)

ILL any adult, person agency, association 405/

PROCESS

NY 736

1 Filing of petition

Summons to parent/guardian

If one p/g files, notice to other adjudication with custody will mean child support.

Any other filer just notice

Temporary order of protection 740

Counsel:

§ 741. Notice of rights; general provision. (a) At the initial appearance of a respondent in a proceeding and at the commencement of

any hearing under this article, the respondent and his parent or other

person legally responsible for his care shall be advised of the

respondent's right to remain silent and of his right to be represented

by counsel chosen by him or his parent or other person legally

responsible for his care, or by a law guardian assigned by the court

under part four of article two.

Notice to foster parent pre-adoptive or relative providing care of permanency

Diversion Agency files report 742

§ 742. Diversion attempts. (a) Whenever a petition is filed pursuant to this article, the lead agency designated pursuant to section seven

hundred thirty-five of this article shall file a written report with the

court indicating any previous actions it has taken with respect to the

case.

(b) At the initial appearance of the respondent, the court shall review any termination of diversion services pursuant to such section, and the documentation of diligent attempts to provide appropriate services and determine whether such efforts or services provided are sufficient and may, subject to the provisions of section seven hundred forty-eight of this article, order that additional diversion attempts be undertaken by the designated lead agency. The court may order the youth and the parent or other person legally responsible for the youth to participate in diversion services. If the designated lead agency thereafter determines that the case has been successfully resolved, it shall so notify the court, and the court shall dismiss the petition.

HEARING

Ill within 120 days (this is not the 1st hearing – that is shelter hearing) 3-16

Evidence standard:

§ 744. Evidence in fact-finding hearings; required quantum.

(a) Only evidence that is competent, material and relevant may be admitted in a fact-finding hearing.

(b) Any determination at the conclusion of a fact-finding hearing that a respondent did an act or acts must be based on proof beyond a reasonable doubt. For this purpose, an uncorroborated confession made out of court by a respondent is not sufficient.

§ 745. Evidence in dispositional hearings; required quantum of proof.

(a) Only evidence that is material and relevant may be admitted during a dispositional hearing.

(b) An adjudication at the conclusion of a dispositional hearing must be based on a preponderance of the evidence.

How long is the chins open? NY allows adjournment – before conclusion of disposition. These are limited.

Adjudication - state grounds for findings – facts on which it is based. 752

Disposition options:

(705 ILCS 405/3-24) (from Ch. 37, par. 803-24)

Sec. 3-24. Kinds of dispositional orders.

(1) The following kinds of orders of disposition may be made in respect to wards of the court: A minor found to be requiring authoritative intervention under Section 3-3 may be

(a) **committed** to the Department of Children and Family Services, subject to Section 5 of the Children and Family Services Act;

(b) **placed under supervision** and released to his or her parents, guardian or legal custodian;

(c) **placed in accordance with Section 3-28 with or without also being placed under supervision**. Conditions of supervision may be modified or terminated by the court if it deems that the best interests of the minor and the public will be served thereby;

(d) **ordered partially or completely emancipated** in accordance with the provisions of the Emancipation of Mature Minors Act; or

(e) subject to having his or her **driver's license or driving privilege suspended** for such time as determined by the Court but only until he or she attains 18 years of age.

(2) Any order of disposition may provide for protective supervision under Section 3-25 and may include an order of protection under Section 3-26.

(3) **Unless the order of disposition expressly so provides, it does not operate to close proceedings on the pending petition, but is subject to modification until final closing and discharge of the proceedings under Section 3-32.**

(4) In addition to any other order of disposition, the court may order any person found to be a minor requiring authoritative intervention under Section 3-3 to make restitution, in monetary or non-monetary form, under the terms and conditions of Section 5-5-6 of the Unified Code of Corrections, except that the "presentence hearing" referred to therein shall be the dispositional hearing for purposes of this Section. The parent, guardian or legal custodian of the minor may pay some or all of such restitution on the minor's behalf.

(5) Any order for disposition where the minor is committed or placed in accordance with Section 3-28 shall provide for the parents or guardian of the estate of such minor to pay to the legal custodian or guardian of the person of the minor such sums as are determined by the custodian or guardian of the person of the minor as necessary for the minor's needs. Such payments may not exceed the maximum amounts provided for by Section 9.1 of the Children and Family Services Act.

(6) Whenever the order of disposition requires the minor to attend school or participate in a program of training, the truant officer or designated school official shall regularly report to the court if the minor is a chronic or habitual truant under Section 26-2a of the School Code.

FEE

(7) The court must impose upon a minor under an order of continuance under supervision or an order of disposition under this Article III, as a condition of the order,

a fee of \$25 for each month or partial month of supervision with a probation officer. If the court determines the inability of the minor, or the parent, guardian, or legal custodian of the minor to pay the fee, the court may impose a lesser fee.

The court may not impose the fee on a minor who is made a ward of the State under this Act.

The fee may be imposed only upon a minor who is actively supervised by the probation and court services department. The fee must be collected by the clerk of the circuit court. The clerk of the circuit court must pay all monies collected from this fee to the county treasurer for deposit into the probation and court services fund under Section 15.1 of the Probation and Probation Officers Act.

(Source: P.A. 92-329, eff. 8-9-01.)

NY –

Discharge

Suspending judgement ?

Continuing with placement

Put respondent on probation

Placement requires findings on best interest

§ 754. Disposition on adjudication of person in need of supervision.

1. Upon an adjudication of person in need of supervision, the court shall enter an order of disposition:

(a) Discharging the respondent with warning;

(b) Suspending judgment in accord with section seven hundred fifty-five;

(c) Continuing the proceeding and placing the respondent in accord with section seven hundred fifty-six;

provided, however, that the court shall not place the respondent in accord with section seven hundred fifty-six where the respondent is sixteen years of age or older, unless the court determines and states in its order that special circumstances exist to warrant such placement; or

(d) Putting the respondent on probation in accord with section seven hundred fifty-seven.

2. (a) The order shall state the court's reasons for the particular disposition. If the court places the child in accordance with section seven hundred fifty-six of this part, the court in its order shall determine:

(i) whether continuation in the child's home would be contrary to the best interest of the child and where appropriate, that reasonable efforts were made prior to the date of the dispositional hearing held pursuant to this article to prevent or eliminate the need for removal of the child from his or her home and,

if the child was removed from his or her home prior to the date of such hearing, that such removal was in the child's best

interest and, where appropriate, reasonable efforts were made to make it possible for the child to return safely home.

If the court determines that reasonable efforts to prevent or eliminate the need for removal of the child from the home were not made but that the lack of such efforts was appropriate under the circumstances, the court order shall include such a finding; and

(ii) in the case of a child who has attained the age of sixteen, the services needed, if any, to assist the child to make the transition from foster care to independent living. Nothing in this subdivision shall be construed to modify the standards for directing detention set forth in section seven hundred thirty-nine of this article.

(b) For the purpose of this section, reasonable efforts to prevent or eliminate the need for removing the child from the home of the child or to make it possible for the child to return safely to the home of the child shall not be required where the court determines that:

(i) the parent of such child has subjected the child to aggravated circumstances, as defined in subdivision (g) of section seven hundred twelve of this article;

(ii) the parent of such child has been convicted of (A) murder in the

first degree as defined in section 125.27 or murder in the second degree as defined in section 125.25 of the penal law and the victim was another child of the parent; or (B) manslaughter in the first degree as defined in section 125.20 or manslaughter in the second degree as defined in section 125.15 of the penal law and the victim was another child of the parent, provided, however, that the parent must have acted voluntarily in committing such crime;

(iii) the parent of such child has been convicted of an attempt to commit any of the crimes set forth in subparagraphs (i) and (ii) of this paragraph, and the victim or intended victim was the child or another child of the parent; or has been convicted of criminal solicitation as defined in article one hundred, conspiracy as defined in article one hundred five or criminal facilitation as defined in article one hundred fifteen of the penal law for conspiring, soliciting or facilitating any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent;

(iv) the parent of such child has been convicted of assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10 or aggravated assault upon a person less than eleven years old as defined in section 120.12 of the penal law, and the commission of one of the foregoing crimes resulted in serious physical injury to the child or another child of the parent;

(v) the parent of such child has been convicted in any other jurisdiction of an offense which includes all of the essential elements of any crime specified in subparagraph (ii), (iii) or (iv) of this paragraph, and the victim of such offense was the child or another child of the parent; or

(vi) the parental rights of the parent to a sibling of such child have been involuntarily terminated; unless the court determines that providing reasonable efforts would be in the best interests of the child, not contrary to the health and safety of the child, and would likely result in the reunification of the parent and the child in the foreseeable future. The court shall state such findings in its order. If the court determines that reasonable efforts are not required because of one of the grounds set forth above, a permanency hearing shall be held within thirty days of the finding of the court that such efforts are not required. At the permanency hearing, the court shall

determine the appropriateness of the permanency plan prepared by the social services official which shall include whether and when the child: (A) will be returned to the parent; (B) should be placed for adoption with the social services official filing a petition for termination of parental rights; (C) should be referred for legal guardianship; (D) should be placed permanently with a fit and willing relative; or (E) should be placed in another planned permanent living arrangement if the social services official has documented to the court a compelling reason for determining that it would not be in the best interest of the child to return home, be referred for termination of parental rights and placed for adoption, placed with a fit and willing relative, or placed with a legal guardian. The social services official shall thereafter make reasonable efforts to place the child in a timely manner and to complete whatever steps are necessary to finalize the permanent placement of the child as set forth in the permanency plan approved by the court. If reasonable efforts are determined by the court not to be required because of one of the grounds set forth in this paragraph, the social services official may file a petition for termination of parental rights in accordance with section three hundred eighty-four-b of the social services law.

(c) For the purpose of this section, in determining reasonable efforts to be made with respect to a child, and in making such reasonable efforts, the child's health and safety shall be the paramount concern.

(d) For the purpose of this section, a sibling shall include a half-sibling.

Suspension

Ct may order restitution as condition max duration is one year 755 also ILL

Placement and extention:

756

§ 756. Placement.

(a) (i) For purposes of section seven hundred fifty-four, the court may place the child in its own home or in the custody of a suitable relative or other suitable private person or a commissioner of social services, subject to the orders of the court.

DSS Custody

(ii) Where the child is placed with the commissioner of social services, the court may direct the commissioner to place the child with an authorized agency or class of authorized agencies. Unless the dispositional order provides otherwise, the court so directing shall include one of the following alternatives to apply in the event that the commissioner is unable to so place the child:

(1) the commissioner shall apply to the court for an order to stay, modify, set aside, or vacate such directive pursuant to the provisions of section seven hundred sixty-two or seven hundred sixty-three; or

(2) the commissioner shall return the child to the family court for a new dispositional hearing and order.

(b) Placements under this section may be for an initial period of twelve months. The court may extend a placement pursuant to section seven hundred fifty-six-a. In its discretion, the court may recommend restitution or require services for public good pursuant to section seven hundred fifty-eight-a in conjunction with an order of placement.

For the purposes of calculating the initial period of placement, such placement shall be deemed to have commenced sixty days after the date the child was removed from his or her home in accordance with the provisions of this article. If the respondent has been in detention pending disposition, the initial period of placement ordered under this section shall be credited with and diminished by the amount of time spent by the respondent in detention prior to the commencement of the placement unless the court finds that all or part of such credit would not serve the best interests of the respondent.

(c) A placement pursuant to this section with the commissioner of social services shall not be directed in any detention facility, but the court may direct detention pending transfer to a placement authorized and ordered under this section for no more than than fifteen days after such order of placement is made. Such direction shall be subject to extension pursuant to subdivision three of section three hundred ninety-eight of the social services law, upon written documentation to the office of children and family services that the youth is in need of specialized treatment or placement and the diligent efforts by the commissioner of social services to locate an appropriate placement.

§ 756-a. Extension of placement. (a) In any case in which the child has been placed pursuant to section seven hundred fifty-six, the child,
the person with whom the child has been placed or the commissioner of
social services may petition the court to extend such placement. Such
petition shall be filed at least sixty days prior to the expiration of
the period of placement, except for good cause shown, but in no event
shall such petition be filed after the original expiration date.

(b) The court shall conduct a permanency hearing concerning the need
for continuing the placement. The child, the person with whom the child
has been placed and the commissioner of social services shall be
notified of such hearing and shall have the opportunity to be heard
thereat.

(c) The provisions of section seven hundred forty-five shall apply at
such permanency hearing. If the petition is filed within sixty days
prior to the expiration of the period of placement, the court shall

first determine at such permanency hearing whether good cause has been

shown. If good cause is not shown, the court shall dismiss the petition.

(d) At the conclusion of the permanency hearing the court may, in its

discretion, order an extension of the placement for not more than one

year. The court must consider and determine in its order:

(i) where appropriate, that reasonable efforts were made to make it

possible for the child to safely return to his or her home, or if the

permanency plan for the child is adoption, guardianship or some other

permanent living arrangement other than reunification with the parent or

parents of the child, reasonable efforts are being made to make and

finalize such alternate permanent placement;

(ii) in the case of a child who has attained the age of sixteen, the

services needed, if any, to assist the child to make the transition from

foster care to independent living;

(iii) in the case of a child placed outside New York state, whether

the out-of-state placement continues to be appropriate and in the best

interests of the child; and

(iv) whether and when the child: (A) will be returned to the parent;

(B) should be placed for adoption with the social services official

filing a petition for termination of parental rights; (C) should be

referred for legal guardianship; (D) should be placed permanently with a

fit and willing relative; or (E) should be placed in another planned

permanent living arrangement if the social services official has

documented to the court a compelling reason for determining that it

would not be in the best interest of the child to return home, be

referred for termination of parental rights and placed for adoption,

placed with a fit and willing relative, or placed with a legal guardian.

(e) Pending final determination of a petition to extend such placement

filed in accordance with the provisions of this section, the court may,

on its own motion or at the request of the petitioner or respondent,

enter one or more temporary orders extending a period of placement not to exceed thirty days upon satisfactory proof showing probable cause for continuing such placement and that each temporary order is necessary. The court may order additional temporary extensions, not to exceed a total of fifteen days, if the court is unable to conclude the hearing within the thirty day temporary extension period. In no event shall the aggregate number of days in extensions granted or ordered under this subdivision total more than forty-five days. The petition shall be dismissed if a decision is not rendered within the period of placement or any temporary extension thereof. Notwithstanding any provision of law to the contrary, the initial permanency hearing shall be held within twelve months of the date the child was placed into care pursuant to section seven hundred fifty-six of this article and no later than every twelve months thereafter. For the purposes of this section, the date the child was placed into care shall be sixty days after the child was removed from his or her home in accordance with the provisions of this section.

(f) Successive extensions of placement under this section may be granted, but no placement may be made or continued beyond the child's eighteenth birthday without his or her consent and in no event past his or her twenty-first birthday.

Termination of placement

NY 764

§ 764. Petition to terminate placement. Any parent or guardian or duly authorized agency or next friend of a person placed under section seven hundred fifty-six may petition to the court for an order terminating the placement. The petition must be verified and must show:

- (a) that an application for release of the respondent was made to the duly authorized agency with which the child was placed;
- b) that the application was denied or was not granted within thirty days from the day application was made; and
- (c) the grounds for the petition.

Treatment ceases - lost funding

§ 771. Discontinuation of treatment by agency or institution. If an authorized agency in which a person is placed under section seven hundred fifty-six

- (a) discontinues or suspends its work; or

(b) is unwilling to continue to care for the person for the reason that support by the state of New York or one of its political subdivisions has been discontinued; or
(c) so fundamentally alters its program that the person can no longer benefit from it,
the person shall be returned by the agency to the court which entered the order of placement.

Nature of adjudication

NY

§ 781. Nature of adjudication. No adjudication under this article may be denominated a conviction, and no person adjudicated a person in need of supervision under this article shall be denominated a criminal by reason of such adjudication.

§ 782. Effect of adjudication. No adjudication under this article shall operate as a forfeiture of any right or privilege or disqualify any person from subsequently holding public office or receiving any license granted by public authority.

§ 784. Use of police records. All police records relating to the arrest and disposition of any person under this article shall be kept in files separate and apart from the arrests of adults and shall be withheld from public inspection, but such records shall be open to inspection upon good cause shown by the parent, guardian, next friend or attorney of that person upon the written order of a judge of the family court in the county in which the order was made or, if the person is subsequently convicted of a crime, of a judge of the court in which he was convicted.

NY SOCIAL SERVICES ACT''

§ 409-a. Preventive services; provision by social services officials.

1. (a) A social services official shall provide preventive services to

a child and his or her family, in accordance with the family's service

plan as required by section four hundred nine-e of this chapter and the

social services district's child welfare services plan submitted and

approved pursuant to section four hundred nine-d of this chapter, upon a

finding by such official that (i) the child will be placed or continued

in foster care unless such services are provided and that it is

reasonable to believe that by providing such services the child will be

able to remain with or be returned to his or her family or * (ii) the

child is the subject of a petition under article seven of the family court act, or has been determined by the assessment service established pursuant to section two hundred forty-three-a of the executive law, or by the probation service where no such assessment service has been designated, to be at risk of being the subject of such a petition, and the social services official determines that the child is at risk of placement into foster care. Such finding shall be entered in the child's uniform case record established and maintained pursuant to section four hundred nine-f of this chapter. The commissioner shall promulgate regulations to assist social services officials in making determinations of eligibility for mandated preventive services pursuant to this subparagraph.

* NB Repealed June 30, 2007

(ii) the child is the subject of a petition under article seven of the family court act, or has been determined by the assessment service established pursuant to section two hundred forty-three-a of the executive law, or by the probation service where no such assessment service has been designated, to be at risk of being the subject of such a petition, and the social services official determines according to standards promulgated pursuant to section three hundred ninety-eight-b of this chapter that the child is at risk of placement into foster care. Such finding shall be entered in the child's uniform case record established and maintained pursuant to section four hundred nine-f of this chapter. The commissioner shall promulgate regulations to assist social services officials in making determinations of eligibility for mandated preventive services pursuant to clause (ii) of this paragraph.

* NB Effective June 30, 2007

(b) When a child and his family have received preventive services for a period of six months pursuant to this subdivision, the social services official shall continue to provide such services only upon making a new finding that the child will be placed or continued in foster care unless

such services are provided and that it is reasonable to believe that by providing such services, the child will be able to remain with or be returned to his family. Such new finding shall be entered in the child's uniform case record established and maintained pursuant to section four hundred nine-f of this chapter.

2. A social services official is authorized to provide preventive services to a child and his family to accomplish the purposes set forth in section four hundred nine of this chapter, when such services are not required to be provided pursuant to subdivision one of this section.

3. * (a) A social services official is authorized to provide community preventive services to communities likely to benefit from such services to accomplish the purposes set forth in section four hundred nine of this chapter. Social services officials may apply to the office of children and family services for waiver of eligibility and administrative requirements for preventive services to be provided pursuant to this subdivision. Such application shall include a plan

setting forth the services to be provided, the persons or community that will receive the services and the estimated cost of such services. Upon approval of the application by the office of children and family services, eligibility requirements established in statute or regulation may be waived for those persons and communities identified in the plan as recipients of the services set forth in the plan. Where services are administered pursuant to a plan approved by the office of children and family services, the office of children and family services may waive the requirements of section four hundred nine-f or four hundred forty-two of this article. * NB Repealed June 30, 2007 *

(a) A social services official is authorized to provide community preventive services to communities likely to benefit from such services to accomplish the purposes set forth in section four hundred nine of this chapter. Social services officials may apply to the department for waiver of eligibility and administrative requirements for preventive services to be provided pursuant to this subdivision. Such application shall include a plan setting forth the services to be provided, the persons or community that will receive the services and the estimated cost of such services. Upon approval of the application by the department, eligibility requirements established in statute or regulation may be waived for those persons and communities identified in the plan as recipients of the services set forth in the plan. Where services are administered pursuant to a plan approved by the department, the department may waive the requirements of sections one hundred fifty-three-d and three hundred ninety-eight-

b of this chapter pertaining to denial or reimbursement. Where such a waiver is approved, the department approval must specify standards whereby services provided will be subject to denial of reimbursement. Where services are administered pursuant to a plan approved by the department, the department may waive the requirements of section four hundred nine-f or four hundred forty-two of this article. * NB Effective June 30, 2007

(b) The department must inform social services districts of procedures governing application for waivers of eligibility and administrative requirements and approval of waivers of eligibility and administrative requirements. Where such waivers are granted, the department shall have the authority to establish alternative standards to be followed by social services officials who are granted waivers by the department. Upon approval of an application for such waivers, the department approval must specify the requirements being waived and any alternative standards established.

(c) Community preventive services may be provided pursuant to this subdivision through demonstration projects to the extent the department makes funds available for such projects.

(d) The department shall develop an evaluation plan no later than April first, nineteen hundred eighty-eight, for community service demonstration projects and, subject to the approval of the director of the budget, may use up to five percent of the amount annually appropriated for project grants to conduct such evaluation which shall include but need not be limited to: an assessment of the effectiveness of various service delivery models in creating or enhancing linkages among school, housing, health, and income support services available in the community; the effectiveness of various preventive services in averting family disruption; the cost effectiveness of providing community focused preventive services; the impact of this service provision on requirements for more intensive mandated preventive services; and, the feasibility of replicating successful service models in other communities throughout the state.

4. Preventive services may be provided directly by the social services official or through purchase of service, in accordance with regulations of the department.

5. (a) Regulations of the department, promulgated pursuant to and not inconsistent with this section, shall contain program standards including, but not limited to: specification of services to be classified as preventive services; appropriate circumstances and conditions for the provision of particular services; appropriate providers and recipients of such services; and time limits, as may be appropriate, for the provision of particular services. The department shall, subject to the approval of the director of the budget, establish reimbursement or charge limitations for particular services or groups of services to be provided. The department shall also promulgate regulations to prevent social services districts from overutilizing particular forms or types of preventive services and to encourage districts to provide balanced preventive services programs based on the identified needs of children and families residing in such districts.

(b) The program standards promulgated pursuant to this subdivision shall be developed with the participation of the child welfare standards advisory council established pursuant to section four hundred nine-h of this chapter and in consultation with public and voluntary authorized agencies, citizens' groups and concerned

individuals and organizations, including the state council on children and families. (c) Notwithstanding any other provision of this section, where a social services official determines that a lack of adequate housing is the primary factor preventing the discharge of a child or children from foster care including, but not limited to, children with the goal of discharge to independent living, preventive services shall include, in addition to any other payments or benefits received by the family, special cash grants in the form of rent subsidies, including rent arrears, or any other assistance, sufficient to obtain adequate housing. Such rent subsidies or assistance shall not exceed the sum of three hundred dollars per month, shall not be provided for a period of more than three years, and shall be considered a special grant. The provisions of this paragraph shall not be construed to limit such official's authority to provide other preventive services.

(e) (i) A social services official is authorized to establish and operate, or contract for the establishment and operation of, intensive, homebased, family preservation programs. (ii) Notwithstanding any other provision of law, reimbursement for intensive, homebased family preservation services shall be limited to those programs that reduce or avoid the need for foster care of children who are in imminent danger of placement. Such programs shall employ caseworkers trained in family preservation techniques and who provide at least half of their direct services in the client's residence or temporary home, work with no more than four families at any given time, provide direct therapeutic services for up to thirty days which may be extended up to an additional thirty days per family and are available twenty-four hours a day. No program described herein shall receive reimbursement unless such program agrees to collect and provide to the department information necessary to evaluate and assess the degree to which such program results in lower costs to the state and to social services districts than those of foster care placement. Such information shall be compiled in a manner that permits comparisons between families served by such programs and those families who meet eligibility criteria but who were not able to be served within available resources. (f) Notwithstanding any other provision of law, where a social services official authorizes the provision of respite care, such care shall mean the temporary care and supervision of a child to relieve parents or other persons legally responsible for the care of such child where immediate relief is needed to maintain or restore family functioning. 6. In accordance with regulations of the department, where the child's family is able to pay all or part of the cost of such services, payments of such fees as may be reasonable or other third party reimbursement as may be available in the light of such ability shall be required. Expenditures subject to reimbursement pursuant to section four hundred nine-b of this title shall be reduced by the sum of all fees received or to be received pursuant to this subdivision. * 7. Notwithstanding any other provision of this section, if a social services official determines that a lack of adequate housing is a factor that may cause the entry of a child or children into foster care and the family has at least one service need other than lack of adequate housing, preventive services may include, in addition to any other payments or benefits received by the family, special cash grants in the form of rent subsidies, including rent arrears, or any other assistance, sufficient to obtain

adequate housing. Such rent subsidies or assistance shall not exceed the sum of three hundred dollars per month, shall not be provided for a period of more than three years, and shall be considered a special grant. The provisions of this paragraph shall not be construed to limit such official's authority to provide other preventive services. * NB There are two sub 7's * 7. Notwithstanding any other provision of law, preventive services information governed by this section may be released by the department, social services district or other provider of preventive services to a person, agency or organization for purposes of a bona fide research project. Identifying information shall not be made available, however, unless it is absolutely essential to the research purpose and the department gives prior approval. Information released pursuant to this subdivision shall not be re-disclosed except as otherwise permitted by law and upon the approval of the department. * NB There are 2 sub 7's 8. In contracting for the provision of preventive services, social services districts shall, to the extent feasible, place such services in areas with a high rate of child abuse and neglect and foster care placements. Social services districts shall, to the extent feasible, consider as a priority community-based organizations with a record of providing quality services to children and families in such communities. 9. (a) Notwithstanding any provision of law to the contrary, records relating to children pursuant to this section shall be made available to officers and employees of the state comptroller, or of the city comptroller of the city of New York, or of the county officer designated by law or charter to perform the auditing function in any county not wholly contained within a city, for purposes of a duly authorized performance audit, provided, however that such comptroller or officer shall have certified to the keeper of such records that he or she has instituted procedures developed in consultation with the department to limit access to client-identifiable information to persons requiring such information for purposes of the audit, that such persons shall not use such information in any way except for purposes of the audit and that appropriate controls and prohibitions are imposed on the dissemination of client-identifiable information obtained in the conduct of the audit. Information pertaining to the substance or content of any psychological, psychiatric, therapeutic, clinical or medical reports, evaluations or like materials or information pertaining to such child or the child's family shall not be made available to such officers and employees unless disclosure of such information is absolutely essential to the specific audit activity and the department gives prior written approval. (b) Any failure to maintain the confidentiality of client-identifiable information shall subject such comptroller or officer to denial of any further access to records until such time as the audit agency has reviewed its procedures concerning controls and prohibitions imposed on the dissemination of such information and has taken all reasonable and appropriate steps to eliminate such lapses in maintaining confidentiality to the satisfaction of the department. The department shall establish the grounds for denial of access to records contained under this section and shall recommend as necessary a plan of remediation to the audit agency, except as provided in this section, nothing in this subdivision shall be construed as limiting the powers of such comptroller or officer to records which he is otherwise authorized to audit or obtain under

any other applicable provision of law, any person given access to information pursuant to this subdivision who released data or information to persons or agencies not authorized to receive such information shall be guilty of a class A misdemeanor. 10. All sums received by the state under section 201 of Federal Public Law 105-89 shall be paid to the districts in proportion to the amount earned by the district for federal adoption incentives and shall only be used to provide preventive services to a child and his or her family as defined in paragraph (a) of subdivision five of this section, in addition to those required by the maintenance of effort requirement contained in subdivision six of section one hundred fifty-three-i of this chapter, except that up to thirty percent of such sums may be used to provide post-adoption services to children or families. Preventive services shall include substance abuse treatment services provided to pregnant women or a caretaker person in an outpatient, residential or in-patient setting. Amounts expended by the state in accordance with this section shall be disregarded in determining the state's expenditures for purposes of federal matching payments under sections four hundred twenty-three, four hundred thirty-four and four hundred seventy-four of this chapter.