

PART E

41 Section 1. Section 712 of the family court act is amended by adding a
42 new subdivision (i) to read as follows:

43 (i) "Diversion services". Services provided to children and families
44 pursuant to section seven hundred thirty-five of this article for the
45 purpose of avoiding the need to file a petition or direct the detention
46 of the child. Diversion services shall include: efforts to adjust cases
47 pursuant to this article before a petition is filed, or by order of the
48 court, after the petition is filed but before fact-finding is commenced;
49 and preventive services provided in accordance with section four hundred
50 nine-a of the social services law to avert the placement of the child
51 into foster care, including crisis intervention and respite services.

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1 § 2. Subdivision (b) of section 718 of the family court act, as
2 amended by chapter 419 of the laws of 1987, is amended to read as
3 follows:

4 (b) A peace officer, acting pursuant to ~~[his]~~ the peace officer's
5 special duties, or a police officer is authorized to take a ~~[child]~~
6 youth who has run away from home or who, in the reasonable opinion of
7 the officer, appears to have run away from home, to a facility certified
8 or approved for such purpose by the ~~[division for youth or to a facility~~
9 ~~approved by the state department of social services]~~ office of children
10 and family services, if the peace officer or police officer is unable,
11 or if it is unsafe, to return the youth to his or her home or to the
12 custody of his or her parent or other person legally responsible for his
13 or her care. Any such facility receiving a ~~[child]~~ youth shall inform a
14 parent or other person responsible for such ~~[child's]~~ youth's care ~~[and~~
15 ~~the family court of its action]~~.

16 § 3. Subdivision 5 of section 720 of the family court act, as added by
17 section 3 of part V of chapter 383 of the laws of 2001, is amended to
18 read as follows:

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

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

28 § 4. Paragraphs (i), (ii) and (iii) of subdivision (b) of section 724
29 of the family court act, paragraphs (i) and (iii) as amended by chapter
30 843 of the laws of 1980 and paragraph (ii) as amended by chapter 492 of
31 the laws of 1987, are amended and a new paragraph (iv) is added to read
32 as follows:

33 (i) release the ~~[child]~~ youth to the custody of his or her parent or
34 other person legally responsible for his or her care upon the written
35 promise, without security, of the person to whose custody the ~~[child]~~
36 youth is released that he or she will produce the ~~[child]~~ youth before
37 the ~~[family court]~~ lead agency designated pursuant to section seven
38 hundred thirty-five of this article in that county at a time and place
39 specified in writing; or

40 (ii) forthwith and with all reasonable speed take the ~~[child]~~ youth
41 directly, and without ~~[his]~~ first being taken to the police station
42 house, to the ~~[family court]~~ designated lead agency located in the coun-

43 ty in which the act occasioning the taking into custody allegedly was
44 done, unless the officer determines that it is necessary to question the
45 ~~[child]~~ youth, in which case he or she may take the ~~[child]~~ youth to a
46 facility designated by the chief administrator of the courts as a suit-
47 able place for the questioning of ~~[children]~~ youth or, upon the consent
48 of a parent or other person legally responsible for the care of the
49 ~~[child]~~ youth, to the ~~[child's]~~ youth's residence and there question him
50 or her for a reasonable period of time; or

51 (iii) take ~~[the child to a place certified by the state division for~~
52 ~~youth as a juvenile detention facility for the reception of children.] a~~
53 youth in need of crisis intervention or respite services to an approved
54 runaway program or other approved respite or crisis program; or

55 (iv) take the youth directly to the family court located in the county
56 in which the act occasioning the taking into custody was allegedly done,

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1 provided that the officer affirms on the record that he or she attempted
2 to exercise the options identified in paragraphs (i), (ii) and (iii) of
3 this subdivision, was unable to exercise these options, and the reasons
4 therefor.

5 § 5. Paragraphs (i) and (ii) of subdivision (d) of section 728 of the
6 family court act are renumbered paragraphs (ii) and (iii) and a new
7 paragraph (i) is added to read as follows:

8 (i) that there is no substantial likelihood that the youth and his or
9 her family will continue to benefit from diversion services and that all
10 available alternatives to detention have been exhausted; and

11 § 6. Subdivisions (a), (b) and (c) of section 732 of the family court
12 act, subdivision (b) as amended by chapter 596 of the laws of 2000, are
13 amended and a new subdivision (d) is added to read as follows:

14 (a) the respondent is an habitual truant or is incorrigible, ungovern-
15 able, or habitually disobedient and beyond the lawful control of his or
16 her parents, guardian or lawful custodian, and specifying the acts on
17 which the allegations are based and the time and place they allegedly
18 occurred. Where habitual truancy is alleged or the petitioner is a
19 school district or local educational agency, the petition shall also
20 include the steps taken by the responsible school district or local
21 educational agency to improve the school attendance and/or conduct of
22 the respondent;

23 (b) the respondent was under eighteen years of age at the time of the
24 specified acts; ~~[and]~~

25 (c) the respondent requires supervision or treatment~~[-]~~; and

26 (d) the petitioner has complied with the provisions of section seven
27 hundred thirty-five of this article.

28 § 6-a. Section 734 of the family court act is REPEALED.

29 § 7. Section 735 of the family court act is REPEALED and a new section
30 735 is added to read as follows:

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

42 (b) The designated lead agency shall:
43 (i) confer with any person seeking to file a petition, the youth who
44 may be a potential respondent, his or her family, and other interested
45 persons, concerning the provision of diversion services before any peti-
46 tion may be filed; and
47 (ii) diligently attempt to prevent the filing of a petition under this
48 article or, after the petition is filed, to prevent the placement of the
49 youth into foster care; and
50 (iii) assess whether the youth would benefit from residential respite
51 services; and
52 (iv) determine whether alternatives to detention are appropriate to
53 avoid removal of the youth to detention.
54 (c) Any person or agency seeking to file a petition pursuant to this
55 article which does not have attached thereto the documentation required
56 by subdivision (g) of this section shall be referred by the clerk of the
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1 court to the designated lead agency which shall schedule and hold, on
2 reasonable notice to the potential petitioner, the youth and his or her
3 parent or other person legally responsible for his or her care, at least
4 one conference in order to determine the factual circumstances and
5 determine whether the youth and his or her family should receive diver-
6 sion services pursuant to this section. Diversion services shall
7 include clearly documented diligent attempts to provide appropriate
8 services to the youth and his or her family unless it is determined that
9 there is no substantial likelihood that the youth and his or her family
10 will benefit from further diversion attempts. Notwithstanding the
11 provisions of section two hundred sixteen-c of this act, the clerk shall
12 not accept for filing under this part any petition that does not have
13 attached thereto the documentation required by subdivision (g) of this
14 section.
15 (d) Diversion services shall include documented diligent attempts to
16 engage the youth and his or her family in appropriately targeted commu-
17 nity-based services, but shall not be limited to:
18 (i) providing, at the first contact, information on the availability
19 of or a referral to services in the geographic area where the youth and
20 his or her family are located that may be of benefit in avoiding the
21 need to file a petition under this article; including the availability,
22 for up to twenty-one days, of a residential respite program, if the
23 youth and his or her parent or other person legally responsible for his
24 or her care agree, and the availability of other non-residential crisis
25 intervention programs such as family crisis counseling or alternative
26 dispute resolution programs.
27 (ii) scheduling and holding at least one conference with the youth and
28 his or her family and the person or representatives of the entity seek-
29 ing to file a petition under this article concerning alternatives to
30 filing a petition and services that are available. Diversion services
31 shall include clearly documented diligent attempts to provide appropri-
32 ate services to the youth and his or her family before it may be deter-
33 mined that there is no substantial likelihood that the youth and his or
34 her family will benefit from further attempts.
35 (iii) where the entity seeking to file a petition is a school district
36 or local educational agency, the designated lead agency shall review the
37 steps taken by the school district or local educational agency to
38 improve the youth's attendance and/or conduct in school and attempt to
39 engage the school district or local educational agency in further diver-
40 sion attempts, if it appears from review that such attempts will be

beneficial to the youth.

(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.

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(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.

(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.

§ 8. Subdivision (a) of section 739 of the family court act, as amended by chapter 920 of the laws of 1982, is amended to read as

41 follows:

42 (a) After the filing of a petition under section seven hundred thir-
43 ty-two of this article, the court in its discretion may release the
44 respondent or direct his or her detention. [~~In exercising its discretion~~
45 ~~under this section,~~] However, the court shall not direct detention
46 unless it finds and states the facts and reasons for so finding that
47 unless the respondent is detained[~~;~~

48 ~~(i)]~~ there is a substantial probability that [~~he~~] the respondent will
49 not appear in court on the return date[~~;~~ ~~or~~

50 ~~(ii) there is a serious risk that he may before the return date do an~~
51 ~~act which if committed by an adult would constitute a crime]~~ and all
52 available alternatives to detention have been exhausted.

53 § 9. Section 742 of the family court act, as added by chapter 813 of
54 the laws of 1985, is amended to read as follows:

55 § 742. [~~Adjustment~~] Diversion attempts. (a) Whenever a petition is
56 filed pursuant to this article, the [~~probation service~~] lead agency
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1 designated pursuant to section seven hundred thirty-five of this article
2 shall file a written report with the court indicating any previous
3 actions it has taken with respect to the case. [~~The written report shall~~
4 ~~meet the requirements of regulations promulgated by the state division~~
5 ~~of probation and correctional alternatives.~~]

6 (b) At the initial appearance of the respondent, the court shall
7 review any [~~determination by the probation service that the respondent~~
8 ~~does not qualify for adjustment services pursuant to section seven~~
9 ~~hundred thirty-five of this article or any]~~ termination of [~~adjustment~~]
10 diversion services pursuant to such section, and the documentation of
11 diligent attempts to provide appropriate services and determine whether
12 such efforts or services provided are sufficient and may, [~~if the~~
13 ~~respondent consents and]~~ subject to the provisions of section seven
14 hundred forty-eight of this article, order that [~~adjustment~~] additional
15 diversion attempts be undertaken by the [~~probation service~~] designated
16 lead agency. The court may order the youth and the parent or other
17 person legally responsible for the youth to participate in diversion
18 services. If the [~~probation service~~] designated lead agency thereafter
19 determines that the case has been successfully [~~adjusted~~] resolved, it
20 shall so notify the court, and the court shall dismiss the petition.

21 [~~(c) The provisions of this section shall apply only to those juris-~~
22 ~~dictions to which section seven hundred thirty-five of this article~~
23 ~~applies.~~]

24 § 10. Subdivision (c) of section 756 of the family court act, as added
25 by chapter 419 of the laws of 1987, is amended to read as follows:

26 (c) A placement pursuant to this section with the commissioner of
27 social services shall not be directed in any detention facility, but the
28 court may direct detention pending transfer to a placement authorized
29 and ordered under this section for no more than [~~thirty days after the~~
30 ~~order of placement is made or in a city of one million or more, for no~~
31 ~~more]~~ than fifteen days after such order of placement is made. Such
32 direction shall be subject to extension pursuant to subdivision three of
33 section three hundred ninety-eight of the social services law, upon
34 written documentation to the office of children and family services that
35 the youth is in need of specialized treatment or placement and the dili-
36 gent efforts by the commissioner of social services to locate an appro-
37 priate placement.

38 § 11. Subdivision (f) of section 759 of the family court act, as
39 amended by chapter 309 of the laws of 1996, is amended to read as

40 follows:

41 (f) to participate in family counseling or other professional coun-
42 seling activities, or other services, including alternative dispute
43 resolution services conducted by an authorized person or an authorized
44 agency to which the ~~[child]~~ youth has been referred or placed, deemed
45 necessary for the rehabilitation of the ~~[child]~~ youth, provided that
46 such family counseling ~~[or]~~ other counseling activity ~~[is]~~ or other
47 necessary services are not contrary to such person's religious beliefs;

48 § 12. Section 218-a of the county law is amended by adding a new
49 subdivision C to read as follows:

50 C. Each county shall offer diversion services to children who are at
51 risk of being the subject of a petition under article seven of the fami-
52 ly court act. Such services shall be designed to provide an immediate
53 response to families in crisis and to identify and utilize appropriate
54 alternatives to juvenile detention.

55 § 13. Section 243-a of the executive law is REPEALED.

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1 § 14. Subdivisions 3, 4 and 5 of section 532-a of the executive law,
2 subdivisions 3 and 5 as amended by chapter 182 of the laws of 2002 and
3 subdivision 4 as amended by chapter 800 of the laws of 1985, are amended
4 to read as follows:

5 3. "Youth in need of crisis intervention or respite services" shall
6 mean a person under the age of eighteen years who is a potential
7 respondent under article seven of the family court act, who, with the
8 consent of his or her parent or other person legally responsible for the
9 youth, is determined by the local juvenile probation department or
10 social services official to be in need of crisis intervention or respite
11 services.

12 4. "Approved runaway program" shall mean any non-residential program
13 approved by the office of children and family services after submission
14 by the county youth bureau, as part of its comprehensive plan, or any
15 residential facility which is operated by an authorized agency as
16 defined in subdivision ten of section three hundred seventy-one of the
17 social services law, and approved by the office of children and family
18 services after submission by the county youth bureau as part of its
19 comprehensive plan, established and operated to provide services to
20 runaway and homeless youth in accordance with the regulations of the
21 office of temporary and disability assistance and the office of children
22 and family services. Such programs may also provide non-residential
23 crisis intervention and residential respite services to youth in need of
24 crisis intervention or respite services, as defined in this section.
25 Residential respite services in an approved runaway program may be
26 provided for no more than twenty-one days in accordance with the regu-
27 lations of the office of children and family services.

28 ~~[4.]~~ 5. "Runaway and homeless youth service coordinator" shall mean
29 any person designated by a county whose duties shall include but not be
30 limited to answering inquiries at any time concerning transportation,
31 shelter and other services available to a runaway or homeless youth or a
32 youth in need of crisis intervention or respite services.

33 ~~[5.]~~ 6. "Transitional independent living support program" shall mean
34 any non-residential program approved by the office of children and fami-
35 ly services after submission by the county youth bureau as part of its
36 comprehensive plan, or any residential facility approved by the office
37 of children and family services after submission by the county youth
38 bureau as part of its comprehensive plan, established and operated to
39 provide supportive services, for a period of up to ~~[twelve]~~ eighteen

40 months in accordance with the regulations of the office of children and
41 family services, to enable homeless youth between the ages of sixteen
42 and twenty-one to progress from crisis care and transitional care to
43 independent living. Such transitional independent living support
44 program may also provide services to youth in need of crisis inter-
45 vention or respite services. Notwithstanding the time limitation in
46 paragraph (i) of subdivision (d) of section seven hundred thirty-five of
47 the family court act, residential respite services may be provided in a
48 transitional independent living support program for a period of more
49 than twenty-one days.

50 § 15. Paragraph (a) of subdivision 1 of section 532-b of the executive
51 law, as added by chapter 722 of the laws of 1978, is amended to read as
52 follows:

53 (a) provide assistance to any runaway or homeless youth or youth in
54 need of crisis intervention or respite services as defined in this arti-
55 cle;

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1 § 16. Subdivision (e) of section 532-d of the executive law, as
2 amended by chapter 182 of the laws of 2002, is amended to read as
3 follows:

4 (e) provide residential services to a youth in need of crisis inter-
5 vention or respite services, as defined in this article; and

6 (f) continue to provide services to a homeless youth who is not yet
7 eighteen years of age but who has reached the eighteen month maximum
8 provided by subdivision six of section five hundred thirty-two-a of this
9 article, until he or she is eighteen years of age or for an additional
10 six months if he or she is still under the age of eighteen; and

11 (g) provide such reports and data as specified by the office of chil-
12 dren and family services.

13 § 17. Paragraph (a) of subdivision 1 of section 34-a of the social
14 services law, as amended by chapter 231 of the laws of 1987, is amended
15 to read as follows:

16 (a) Each social services district shall prepare a multi-year consol-
17 idated services plan encompassing adult services and family and chil-
18 dren's services, which shall include diversion services provided pursu-
19 ant to section seven hundred thirty-five of the family court act.

20 § 18. Subdivision 4 of section 34-a of the social services law, as
21 added by chapter 681 of the laws of 1981, is amended to read as follows:

22 4. ~~[The]~~ (a) Except as provided in paragraph (b) of this subdivision,
23 the commissioner shall review both the multi-year services plan and the
24 annual implementation reports submitted by the social services district,
25 using standards consistent with the provisions of sections one hundred
26 thirty-one-1, four ~~[hundred-nine-d]~~ hundred nine-d and four hundred
27 twenty-three of this chapter, and shall notify such district, in writ-
28 ing, of approval of such plan or reports in whole or in part; provided,
29 however, that for any portions not approved, the commissioner shall in
30 writing to the district specify the portions not approved, the reasons
31 for such determination, the actions required for resubmittal of such
32 portions, and the time period of resubmittal; and provided further, that
33 disapproval of a portion of such plan or report shall not render the
34 entire plan or report invalid. No portion of the multi-year services
35 plan or of the annual implementation reports shall be finally disap-
36 proved until the district has had at least one opportunity for resubmit-
37 tal. Upon resubmittal, or if no resubmittal is made within the time
38 specified, the commissioner may grant further extensions to the district
39 to allow it to resubmit any unapproved portions, or may finally disap-

40 prove such portions. Any social services district aggrieved by a final
41 disapproval of the commissioner under this section shall have the right
42 to a fair hearing in accordance with the appropriate provisions of this
43 chapter. An adverse fair hearing decision shall be reviewable pursuant
44 to article seventy-eight of the civil practice law and rules. State
45 reimbursement may be withheld for all or a portion of a local district's
46 activities, if the multi-year services plan, annual implementation
47 report, or portions of either are disapproved.

48 (b) The commissioner of the office of children and family services
49 shall review and approve or disapprove the diversion services portion of
50 the plan jointly with the director of probation and correctional alter-
51 natives or any other successor agency or entity. The requirements for
52 the portion of the plan and report regarding the provision of diversion
53 services shall be jointly established by the commissioner of the office
54 of children and family services and the director of probation and
55 correctional alternatives or any other successor agency or entity. The
56 multi-year services plan and where appropriate the annual implementation

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1 reports shall be based upon a written understanding between the local
2 social services district and the probation department which outlines the
3 cooperative procedures to be followed by both parties regarding diver-
4 sion services pursuant to section seven hundred thirty-five of the fami-
5 ly court act, consistent with their respective obligations as otherwise
6 required by law.

7 § 19. Paragraph (c) of subdivision 3 of section 398 of the social
8 services law, as amended by chapter 419 of the laws of 1987, is amended
9 to read as follows:

10 (c) Receive within [~~thirty~~] fifteen days from the order of placement
11 as a public charge any delinquent child committed or placed or person in
12 need of supervision placed in his or her care by the family court
13 provided, however, that the commissioner of the social services district
14 with whom the child is placed may apply to the state commissioner or his
15 or her designee for approval of an additional [~~thirty~~] fifteen days [~~for~~
16 ~~good cause shown. In a city with a population of one million or more,~~
17 ~~the commissioner of the social services district shall receive within~~
18 ~~fifteen days from the order of placement as a public charge any delin-~~
19 ~~quent child, or person in need of supervision, committed or placed in~~
20 ~~his care by the family court provided, however, that the commissioner of~~
21 ~~the social services district with whom the child is placed may apply to~~
22 ~~the state commissioner or his designee for approval of an additional~~
23 ~~fifteen days for good cause shown], upon written documentation to the~~
24 office of children and family services that the youth is in need of
25 specialized treatment or placement and the diligent efforts by the
26 commissioner of social services to locate an appropriate placement.

27 § 20. This act shall take effect immediately and shall be deemed to
28 have been in full force and effect on and after April 1, 2005.