



NEW YORK
CITY BAR

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REPORT ON LEGISLATION BY THE COUNCIL ON CHILDREN

A.9523-B
S.6361-B

M. of A. Fields
Sen. Foley

AN ACT to amend the family court act, in relation to youth drug and alcohol detoxification; and to amend the insurance law, in relation to providing benefits for treatment of chemical dependency in certain health insurance plans

THIS LEGISLATION IS OPPOSED

The Council on Children of the New York City Bar Association is a diverse group of legal professionals representing eight City Bar committees and working on behalf of children.

Although the Council appreciates the stated justification for this bill – *i.e.*, the desire to help parents and guardians facing intractable drug abuse by youth under their care who are unwilling to participate in treatment – we urge that it not be enacted. It is constitutionally impermissible and, as a practical matter, far too vague to achieve its stated purpose.

Summary of Bill

In sum, this bill permits a parent, social worker or person with whom a child has a “close personal relationship” to go to court and allege that (i) the child has a drug abuse problem, (ii) presents a risk to himself or herself or to another person, (iii) needs drug “detoxification and stabilization” and (iv) should be examined by a credentialed alcoholism and substance abuse counselor to determine whether he or she should be admitted to a detoxification facility. If the judge is satisfied that the youth should be examined by a counselor for these purposes, the judge may issue a warrant for the youth’s apprehension. After the youth is involuntarily apprehended and examined (which must take place within 24 hours of the youth’s apprehension), the counselor may then seek a detoxification order from the court. Pursuant to the detoxification order, the youth may be detained in a detoxification facility for an indeterminate period of time. The youth (or someone on his or her behalf) may appeal the detoxification order by filing a notice of motion within seven days of the decision or within any longer period that the judge may allow.

Reasons for Opposition

First, the bill fails to provide any due process protections for the child who is subject to an involuntary commitment based on a court order obtained on an entirely *ex parte* basis. The bill does not provide that the child is entitled to an attorney. Indeed, the child cannot seek any legal relief until *after* he or she has been involuntarily placed in a detoxification facility or apprehended

and detained for an examination. As a practical matter, the child will be apprehended and placed in a facility with no access to the court until a post-hoc appeal is filed either by the youth or someone on his or her behalf. Since the youth is not entitled to a lawyer, it is extremely unlikely that he or she will have the wherewithal to go to court and file a motion on his or her behalf. And, in situations where the parent or guardian is not capable of filing the motion, or in fact agrees with the involuntary commitment of the child, the youth literally will have no voice. The bill tramples the constitutional rights of the child, is contrary to existing law, and is not likely to withstand constitutional challenge.¹

Second, the bill fails to provide any due process protections for the parent of the child who is subject to the involuntary commitment. Parental rights can be infringed in cases where another adult, such as a social worker or person with a “close relationship” to the child sets the involuntary detoxification procedure in motion. There need be no showing that the parents are unfit, nor are the parents afforded notice and an opportunity to be heard. There is no mechanism to prove or challenge whether a “close relationship” exists as between the applicant and the child, or whether illicit motivations may be at work. Indeed, the parent may not even know what has happened to their child for at least the first 24 hours. The bill tramples the constitutional rights of the child’s parents, is contrary to existing law, and is not likely to withstand constitutional challenge in this regard as well.²

Third, the bill is shockingly vague. For instance, it does not define “close relationship” or “stabilization”. It does not specify the length of time that a child can be detained for detoxification or any mechanism to determine what specific steps should be taken after the child has been detained. The open-ended detainment of a child without due process cannot be permitted to occur in this State or under existing law, no matter how laudable the goals of this legislation may be.

For these reasons, the Council on Children opposes this bill and urges that it not be enacted into law.

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¹ *In re Gault et al.*, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1966) (a youth who is the subject of charges that may lead to involuntary commitment must be provided with the protections afforded by the due process clause of the 14th Amendment, including notice, opportunity to be heard, and representation by counsel). Also, under Article 7 of the Family Court Act, where a parent seeks to have the court assert jurisdiction over the child, that child must be represented by separate counsel. Finally, since the bill defines “youth” as an individual who has not yet attained 21 years, it runs afoul of the Mental Hygiene Law with respect to individuals aged 18 – 21 years. The MHL requires immediate notification of an involuntary admission to the mental hygiene legal services and written notice of the admission to the person alleged to be mentally ill, a nearest relative and up to three additional designees of the person involuntarily committed. The notice must include written notification of the person’s rights under the law. MHL §9.29. The mental hygiene legal services must inform the admitted person of his or her right to a judicial review, to be represented by counsel and to seek another medical opinion. MHL§47.03. Medical certification must be made by two examining physicians who must consider alternative forms of care and treatment. MHL §9.27. If a request for a hearing is made, the court must schedule the hearing not later than five days from receipt of the notice. MHL §9.31.

² *Santosky v. Kramer*, 455 U.S.745, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982) (parents must be afforded due process protections to ensure that a child is not removed without good cause); *Bennett v. Jeffreys*, 40 N.Y.2d 543, 356

N.E.2d 277, 387 N.Y.S.2d 821 (1976) (a parent's right to make decisions about treatment and services for his or her child is paramount and cannot be assumed by others absent a showing that the parent is unfit to make such decisions).