



**NEW YORK
CITY BAR**

Contact: Maria Cilenti - Director of Legislative Affairs - mcilenti@nycbar.org - (212) 382-6655

REPORT ON LEGISLATION BY THE COUNCIL ON CHILDREN

**A.11273-A
S.7833-A**

**M. of A. Lavine
Sen. Foley**

AN ACT to amend the family court act, in relation to youth drug and alcohol detoxification; to amend the mental hygiene law, in relation to reports on chemical dependence; to amend the insurance law, in relation to providing benefits for treatment of chemical dependency in certain health insurance plans; and to amend the judiciary law, in relation to adopting rules for independent alcoholism and substance abuse counselors.

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 (the desire to help parents and guardians facing intractable drug abuse by youth under their care who are unwilling to participate in treatment), we continue to urge that it not be enacted as drafted.

STATUTORY BACKGROUND

This bill would create a new mechanism for adjudicating a child a Person in Need of Supervision (PINS), pursuant to Family Court Act Art. 7, based on the filing of a petition by a parent or legal guardian alleging that the child is in need of immediate in-patient detoxification services for chemical dependence. Where such a petition has been filed, the court may require the child to undergo an immediate assessment by a certified alcoholism or substance abuse counselor, after which a hearing will be held to determine whether the child should be ordered into a detox facility. The bill does not require the use of any of the well-regarded PINS diversion services and, instead, places the child immediately within the confines of the court system. For this reason, the Council opposes the bill.

USE OF DIVERSION PROCEDURES IN PINS CASES

According to Family Court Act Sect. 712(a), a “person in need of supervision” is “a person less than eighteen years of age who does not attend school . . . or who is incorrigible, ungovernable or habitually disobedient and beyond the lawful control of a parent or other person legally responsible for such child’s care, or other lawful authority, or who violates the provisions of section 221.05, 230.00, or 240.37 of the penal law.” In counties or cities having a population of one million or more, a child *cannot* be adjudicated a PINS unless and until certain efforts have been made to “divert” the case – *i.e.*, a responsible lead agency must attempt to *prevent* the filing

of a PINS petition by working with the child and the family to provide services and resolve matters without resorting to court procedures.¹

In those jurisdictions utilizing diversion procedures, a clerk cannot accept a PINS petition for filing unless it is demonstrated that diversion attempts have been unsuccessful or that the child has consented to diversion procedures. The bill, as currently drafted, would do away with diversion requirements in those cases where the child is allegedly in need of in-patient detoxification.² For this reason, the Council opposes the bill.

REASONS FOR OPPOSITION

By allowing circumvention of diversion procedures in cases involving youth and chemical dependency, the bill presents a number of concerns. First, passing a statute that increases PINS cases after child and family court advocates and practitioners have long worked to *reduce* the number of cases where children are named as respondents, is contrary to much of the best practice work being undertaken throughout the state. PINS diversion is arguably one of the most successful aspects of the PINS statute and has proven its success by keeping families intact while providing services and community based support rather than involve the courts and disrupt families through placements that might be avoided. The failure to include diversion in this draft of the bill could have very costly implications.

Diversion has proven to be highly beneficial in other PINS cases. In some cases, diversion helps to prevent the filing of a petition – particularly cases in which the behaviors complained of by the parent would not justify a PINS finding and those in which the child agrees to cooperate with recommended services in order to avoid the court proceeding. In other cases, diversion is used to help identify community-based resources that can be accessed to avoid remanding the child to a residential placement. Cases that benefit from diversion save the state costs associated with both court proceedings and with residential placements. Moreover, the diversion process helps keep families intact and avoids unnecessary court involvement in all but the most serious and intractable cases. Indeed, in those cases where severe drug abuse is indicated and diversion has proven unsuccessful, current law would allow parents to file a PINS proceeding after diversion.

Diversion procedures should not be jettisoned simply because a parent files a PINS petition in order to obtain detoxification services for a child. To the contrary, PINS diversion could be a tremendous benefit for a young person with an addiction because if the young person voluntarily agrees to participate in drug treatment services, the chances of success are much greater than when the participation is involuntary. In addition, PINS diversion is a crucial gatekeeper that

¹ Family Court Act Sect. 735(a). Section 712(i) of the Family Court Act defines diversion services as “services provided to children and families . . . for the purpose of avoiding the need to file a petition or direct the detention of the child. Diversion services shall include: efforts to adjust cases pursuant to this article before a petition is filed, or by order of the court, after the petition is filed but before fact-finding is commenced; and preventive services . . . to avert the placement of the child into foster care, including crisis intervention and respite services.”

² Section 5 of the bill provides that the “clerk of the court shall accept a [PINS] petition for filing if it includes a request that the court issue an emergency order for the potential respondent to receive immediate in-patient detoxification services for chemical dependence pursuant to section seven hundred thirty-nine of this part.” This will permit complete circumvention of the PINS diversion procedures set forth in Family Court Act Sect. 735(a), procedures which must otherwise be complied with before a clerk can accept a PINS petition for filing.

would prevent concerned parents from flooding the court system with petitions seeking assessments and treatment for youth who might be experimenting with drug use, though they are not “incapacitated” or in immediate danger. It would not be unreasonable to expect that parents could misguidedly use the new PINS provisions to obtain services for children who occasionally use drugs or alcohol and children who experiment with the use of drugs or alcohol, in addition to children who have a serious substance abuse problem. For many concerned parents, ANY drug use could be viewed as incapacitating and/or placing the child in immediate risk of harm. Diversion must be required in order to screen out cases that would not be appropriate for court intervention and to provide an avenue for voluntary cooperation with services, outside of the court process.

Diversion is particularly important in obtaining effective drug treatment for youth who are the subject of PINS petitions because research appears to indicate that the effectiveness of drug-treatment programs for adolescents is largely correlated with the youths’ readiness to accept treatment, and become therapeutically engaged in treatment. Studies such as those published by K.M. Broome et. al., (Engagement Models for Adolescents in DATOS-A, Journal of Adolescent Research, vol. 16, No. 6 pp 608-623 (2001)) and M.M. Wong, et. al., Compliance Among Adolescents During Drug Treatment, Journal of Child and Adolescent Substance Abuse, vol. 12, issue 2 pp 13-31 (2002)) suggest that adolescents who willingly enter drug treatment are more likely to benefit from treatment than those who are mandated to comply. As such, youth who are presented with the opportunity to voluntarily enter drug treatment through PINS diversion are likely to be more successful in treatment than youth who are forced into treatment by the court.

At a time when far too many crucial services for children and families are being cut, we urge that the legislature not invest in a costly program whose effectiveness is questionable. A.11273-A/S.7833-A could overwhelm an already overburdened family court system with petitions filed by parents seeking to ensure that their children’s drug use is not out of control, and could overwhelm drug treatment programs with youth who will not benefit from treatment because of their unwillingness to participate. For this reason, we would urge the legislature not to pass this bill, and certainly not without modifying it to require that diversion services be offered – as in all other PINS proceedings.

June 2010