

**A07599 Summary:**

BILL NO A07599B  
SAME AS SAME AS  
SPONSOR Robinson  
COSPNSR  
MLTSPNSR

Amd SS735 & 742, Fam Ct Act

Relates to warrants and orders of protection in persons in need of supervision cases.

**A07599 Memo:**

NEW YORK STATE ASSEMBLY  
MEMORANDUM IN SUPPORT OF LEGISLATION  
submitted in accordance with Assembly Rule III, Sec 1(f)

**BILL NUMBER:** A7599B

**SPONSOR:** Robinson

**TITLE OF BILL:** An act to amend the family court act, in relation to warrants and orders of protection in persons in need of supervision cases

This is one in a series of measures being introduced at the request of the Chief Administrative Judge upon the recommendation of her Family Court Advisory and Rules Committee.

The landmark reform of the persons in need of supervision (PINS) statute, enacted as part of the 2005 New York State budget, added statewide uniformity to the provisions regarding diversion of cases from the Family

Court and furthered the salutary legislative goals of reducing unnecessary PINS prosecutions and placements and of ensuring that families in crisis would receive appropriate services. See L. 2005, c. 57, Part E. However, the statute is overly restrictive as it permits Family Court to refer youth and families for diversion services only upon the youth's initial appearance - notwithstanding that diversion may also be effective at a later point and, indeed, its appropriateness may only become clear at a later point. Further, the statute eliminates the ability of parents to obtain necessary emergency relief in the infrequent, but alarming, cases in which their children pose an imminent risk to themselves, their parents or their families. We offer this measure to permit diversion referrals at any time. Moreover, the measure would carve out two narrowly-defined exceptions to the pre-petition diversion requirements, thus restoring essential emergency remedies that existed in the

PINS statute prior to the 2005 reform.

First, this measure would amend Family Court Act §742 to permit the Court to order the designated diversion agency to provide diversion services at any time during the pendency of a PINS proceeding, not simply upon the accused juvenile's first appearance.

In some cases, the youth and family may become amenable to diversion services at a later point; in others, diversion services may not have been appropriate or available the outset, but may subsequently be identified as needed and as appropriate. Family mediation and respite care are prominent examples of diversion services that should be afforded at any point that they may be appropriate.

Second, the measure would permit a potential PINS petitioner to file a PINS petition and to request a warrant for a child who has absconded and cannot be located. In such case, the child cannot appear at the diversion conference and the designated diversion agency is, therefore,

unable to provide the required documentation of its diligent efforts to prevent the filing of a petition through the convening of the conference. See Matter of James S. v. Jessica B., 9 Misc.3d 229 (Fam. Ct., Suff. Co., 2005). This warrant exception would provide an avenue of relief for parents in critical emergency situations in which a child has run away and may be living on the street under dangerous circumstances. Significantly, it would not apply to cases in which children abscond to the home of another parent or identifiable friend or relative, may easily be located and may still be available to participate in diversion conferences. Reflecting the prevalent practice in Family Courts statewide prior to the 2005 legislation, once a child has been apprehended on the warrant and appears in Family Court, the Court would then refer the family to the diversion agency, pursuant to Family Court Act 742(b), unless the Court determines that there is a substantial likelihood that

the child would again abscond or that there is no substantial likelihood that the youth and his or her family would benefit from diversion attempts. If the diversion agency is successful in resolving the family problem through provision of services, the designated diversion agency would so notify the Court, which would then dismiss the petition.

Third, the measure would permit a potential PINS petitioner to file a PINS petition requesting a temporary order of protection in the rare, but serious, circumstance in which a child poses an imminent risk to the petitioner and/or a member of his or her household. Again, this would provide emergency relief in cases in which the need for protection is immediate, i.e., cases in which the requirement for the diversion agency to convene a conference with the child and potential petitioner would impede efforts to prevent injury. Once the emergency has abated and the child and petitioner are before the Court, the Court would then refer

the parties to the diversion agency, pursuant to Family Court Act §742(b), unless the Court determines that the child continues to pose an imminent risk to the petitioner or a household member or that there is no substantial likelihood that the youth and his or her family would benefit from diversion attempts. Again, if diversion efforts are successful, the designated diversion agency would so notify the Court, which would then dismiss the petition. Affording the petitioner the remedy of obtaining an order of protection is absolutely essential not only to prevent harm, but also to stem an increasingly disturbing trend that has become evident in Family Courts statewide. In the absence of a means of obtaining an immediate order of protection in cases of child-against-parent violence or threats of violence, all too often parents file family offense petitions pursuant to Article 8 of the Family Court Act as a means of evading the diversion requirements of the PINS stat-

ute. Article 8, however, affords none of the specialized services or due process protections guaranteed to juveniles under the PINS law if meaningful relief were preserved under the PINS statute, its salutary purposes would be preserved while necessary protection would be provided.

Enactment of this proposal would strengthen the PINS statute by restoring much needed remedies for emergency situations that existed prior to the 2005 enactment. At the same time, it would encourage diversion by permitting Family Courts to make referrals at any time and, in cases where petitions were filed without prior diversion attempts, it would establish a rebuttable presumption in favor of post-petition referral for diversion services. By filling these gaps in the available relief with the narrowly-constructed exceptions contained in this measure, the Legislature would ensure that the PINS statute would provide broader avenues of relief to resolve family problems.

This measure, which would have no fiscal impact upon the State, would take effect on the ninetieth day after it shall have become a law.

**2011 LEGISLATIVE HISTORY:**

Senate 4050 (Sen. Gallivan)

**Passed**

Assembly 7599 (M, of A. Robinson) rCodesi