

3831

2013-2014 Regular Sessions

I N   S E N A T E

February 21, 2013

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Introduced by Sen. GALLIVAN -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the family court act, in relation to adjudication, dispositional and violation procedures in juvenile delinquency and persons in need of supervision cases

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Subdivision 1 of section 315.3 of the family court act, as  
2     amended by chapter 535 of the laws of 2011, is amended to read as  
3     follows:  
4     1. Except where the petition alleges that the respondent has committed  
5     a designated felony act, the court may at any time prior to the entering  
6     of a finding under section 352.1 and with the consent of the respondent  
7     order that the proceeding be "adjourned in contemplation of dismissal".  
8     An adjournment in contemplation of dismissal is an adjournment of the  
9     proceeding, for a period not to exceed six months, with a view to ultimate  
10    dismissal of the petition in furtherance of justice. Upon issuing  
11    such an order, providing such terms and conditions as the court deems  
12    appropriate, the court must release the respondent. The court may, as a  
13    condition of an adjournment in contemplation of dismissal order, in  
14    cases where the record indicates that the consumption of alcohol may  
15    have been a contributing factor, require the respondent to attend and  
16    complete an alcohol awareness program established pursuant to [of]  
17    subdivision (a) of section [19.07] 19.25 of the mental hygiene law. The  
18    court may, as a condition of an adjournment in contemplation of dismissal  
19    order, in cases where the record indicates that the respondent is an  
20    eligible person as defined in section four hundred fifty-eight-1 of the  
21    social services law and has allegedly committed an eligible offense as  
22    defined in such section, direct the respondent to attend and complete an  
23    education reform program established pursuant to section four hundred

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 fifty-eight-1 of the social services law. [Upon ex parte motion by the  
2 presentment agency, or upon the court's own motion, made at the time the  
3 order is issued or at] AT any time during [its] THE duration OF AN ORDER  
4 ISSUED PURSUANT TO THIS SECTION, the court may restore the matter to the  
5 calendar IN ACCORDANCE WITH SUBDIVISION FOUR OF THIS SECTION. If the  
6 proceeding is not restored, the petition is, at the expiration of the  
7 order, deemed to have been dismissed by the court in furtherance of  
8 justice.

9 S 2. Section 315.3 of the family court act is amended by adding a new  
10 subdivision 4 to read as follows:

11 4. AN APPLICATION TO RESTORE THE MATTER TO THE CALENDAR IN ACCORDANCE  
12 WITH SUBDIVISION ONE OF THIS SECTION SHALL BE IN THE FORM OF A VERIFIED  
13 PETITION WHICH SHALL BE SERVED ON THE RESPONDENT, WHO SHALL HAVE AN  
14 OPPORTUNITY TO BE HEARD WITH RESPECT THERETO. THE PETITION SHALL STATE  
15 THE FACTUAL BASIS FOR THE RESTORATION, INCLUDING THE CONDITION OR CONDI-  
16 TIONS ALLEGED TO HAVE BEEN VIOLATED AND THE TIME, PLACE AND MANNER IN  
17 WHICH SUCH VIOLATION OCCURRED. THE RESPONDENT IS ENTITLED TO COUNSEL AT  
18 ALL STAGES OF A PROCEEDING UNDER THIS SECTION, AND THE COURT SHALL  
19 ADVISE THE RESPONDENT OF SUCH RIGHT AT THE INITIAL APPEARANCE ON ANY  
20 PETITION FILED HEREUNDER. UPON REQUEST, THE COURT SHALL GRANT A REASON-  
21 ABLE ADJOURNMENT TO THE RESPONDENT IN ORDER TO RESPOND TO THE PETITION  
22 AND, IF THE FACTUAL ALLEGATIONS OF THE PETITION ARE CONTESTED, TO  
23 PREPARE FOR A HEARING. IF THE COURT DETERMINES THAT THE RESPONDENT  
24 SHOULD BE DETAINED IN ACCORDANCE WITH THE CRITERIA IN SUBDIVISION THREE  
25 OF SECTION 320.5, THE COURT SHALL HEAR AND DETERMINE THE PETITION WITHIN  
26 THREE DAYS; PROVIDED, HOWEVER, THAT FOR GOOD CAUSE SHOWN, THE COURT MAY  
27 ADJOURN THE MATTER FOR NOT MORE THAN THREE ADDITIONAL DAYS. IF, AFTER  
28 HEARING THE PETITION, THE COURT FINDS THAT THE PRESENTMENT AGENCY HAS  
29 DEMONSTRATED BY RELEVANT AND MATERIAL EVIDENCE THAT ONE OR MORE CONDI-  
30 TIONS OF THE ORDER HAVE BEEN VIOLATED, THE COURT SHALL STATE ON THE  
31 RECORD THE REASONS FOR SUCH DETERMINATION, GRANT THE PETITION, RESTORE  
32 THE MATTER TO THE CALENDAR AND SCHEDULE THE PROCEEDING FOR A FACT-FIND-  
33 ING HEARING OR DISPOSITIONAL HEARING, AS APPLICABLE. UPON FILING THE  
34 PETITION, THE PERIOD OF THE ADJOURNMENT IN CONTEMPLATION OF DISMISSAL  
35 SHALL BE INTERRUPTED. SUCH INTERRUPTION SHALL CONTINUE UNTIL SUCH TIME  
36 AS THE COURT DETERMINES THE PETITION. IF THE COURT DENIES THE PETITION,  
37 THE PERIOD DURING WHICH THE PETITION WAS PENDING SHALL BE CREDITED TO  
38 THE PERIOD OF THE ADJOURNMENT IN CONTEMPLATION OF DISMISSAL.

39 S 3. Subdivisions 2, 4 and 5 of section 360.2 of the family court act,  
40 as added by chapter 920 of the laws of 1982, are amended to read as  
41 follows:

42 2. The petition must be verified and subscribed by the probation  
43 service or the appropriate presentment agency. Such petition must stipu-  
44 late the condition or conditions of the order violated and a reasonable  
45 description of the time, place and manner in which the violation  
46 occurred. Non-hearsay allegations OR ALLEGATIONS MADE UPON INFORMATION  
47 AND BELIEF of the factual part of the petition or of any supporting  
48 depositions must establish, if true, every violation charged.

49 4. If a petition is filed under subdivision one, the period of  
50 probation as prescribed by section 353.2 OR CONDITIONAL DISCHARGE AS  
51 PRESCRIBED BY SECTION 353.1 shall be interrupted as of the date of the  
52 filing of the petition. Such interruption shall continue until a final  
53 determination as to the petition has been made by the court pursuant to  
54 a hearing held in accordance with section 360.3 or until such time as  
55 the respondent reaches the maximum age of acceptance into a division for  
56 youth facility.

1 5. If the court determines THAT there was no violation of probation OR  
2 CONDITIONAL DISCHARGE by the respondent, the period of interruption  
3 shall be credited to the period of probation OR CONDITIONAL DISCHARGE,  
4 AS APPLICABLE.

5 S 4. Subdivision (h) of section 735 of the family court act, as added  
6 by section 7 of part E of chapter 57 of the laws of 2005, is amended to  
7 read as follows:

8 (h) No statement made to the designated lead agency or to any agency  
9 or organization to which the potential respondent HAS BEEN REFERRED,  
10 prior to the filing of the petition, or if the petition has been filed,  
11 prior to the time the respondent has been notified that attempts at  
12 diversion will not be made or have been terminated, or prior to the  
13 commencement of a fact-finding hearing if attempts at diversion have not  
14 terminated previously, may be admitted into evidence at a fact-finding  
15 hearing or, if the proceeding is transferred to a criminal court, at any  
16 time prior to a conviction.

17 S 5. The family court act is amended by adding a new section 743 to  
18 read as follows:

19 S 743. ACCEPTANCE OF AN ADMISSION. (A) BEFORE ACCEPTING AN ADMISSION,  
20 THE COURT SHALL ADVISE THE RESPONDENT OF HIS OR HER RIGHT TO A  
21 FACT-FINDING HEARING. THE COURT SHALL ALSO ASCERTAIN THROUGH ALLOCUTION  
22 OF THE RESPONDENT AND HIS OR HER PARENT OR PERSON LEGALLY RESPONSIBLE  
23 FOR HIS OR HER CARE, IF PRESENT, THAT THE RESPONDENT:

24 (I) COMMITTED THE ACT OR ACTS TO WHICH AN ADMISSION IS BEING ENTERED;

25 (II) IS VOLUNTARILY WAIVING HIS OR HER RIGHT TO A FACT-FINDING HEAR-  
26 ING; AND

27 (III) IS AWARE OF THE POSSIBLE SPECIFIC DISPOSITIONAL ORDERS.

28 THE PROVISIONS OF THIS SUBDIVISION SHALL NOT BE WAIVED.

29 (B) UPON ACCEPTANCE OF AN ADMISSION, THE COURT SHALL STATE THE REASONS  
30 FOR ITS DETERMINATION AND SHALL ENTER A FACT-FINDING ORDER. THE COURT  
31 SHALL SCHEDULE A DISPOSITIONAL HEARING IN ACCORDANCE WITH SUBDIVISION  
32 (B) OR (C) OF SECTION SEVEN HUNDRED FORTY-NINE OF THIS PART.

33 S 6. Section 776 of the family court act is amended to read as  
34 follows:

35 S 776. Failure to comply with terms and conditions of suspended judg-  
36 ment. [If a] A respondent [is] brought before the court for failure to  
37 comply with reasonable terms and conditions of [a] AN ORDER OF suspended  
38 judgment [issued under this article and if,] SHALL BE SUBJECT TO SECTION  
39 SEVEN HUNDRED SEVENTY-NINE-A OF THIS PART. IF, after hearing, the court  
40 [is satisfied] DETERMINES by competent proof that the respondent WITHOUT  
41 JUST CAUSE failed to comply with such terms and conditions, the court  
42 may ADJOURN THE MATTER FOR A NEW DISPOSITIONAL HEARING IN ACCORDANCE  
43 WITH SUBDIVISION (B) OR (C) OF SECTION SEVEN HUNDRED FORTY-NINE OF THIS  
44 ARTICLE. THE COURT MAY revoke the [suspension] ORDER of SUSPENDED judg-  
45 ment and proceed to make any order that might have been made at the time  
46 judgment was suspended.

47 S 7. Section 779 of the family court act is amended to read as  
48 follows:

49 S 779. [Failure] JURISDICTION AND SUPERVISION OF RESPONDENT PLACED ON  
50 PROBATION; FAILURE to comply with terms of probation. [If a] (A) A  
51 RESPONDENT WHO IS PLACED ON PROBATION IN ACCORDANCE WITH SECTION SEVEN  
52 HUNDRED FIFTY-SEVEN OF THIS ARTICLE SHALL REMAIN UNDER THE LEGAL JURIS-  
53 DICTION OF THE COURT PENDING EXPIRATION OR TERMINATION OF THE PERIOD OF  
54 PROBATION.

55 (B) THE PROBATION SERVICE SHALL SUPERVISE THE RESPONDENT DURING THE  
56 PERIOD OF SUCH LEGAL JURISDICTION.

1 (C) A respondent [is] brought before the court for failure to comply  
2 with reasonable terms and conditions of an order of probation issued  
3 under SECTION SEVEN HUNDRED FIFTY-SEVEN OF this article [and if,] SHALL  
4 BE SUBJECT TO SECTION SEVEN HUNDRED SEVENTY-NINE-A OF THIS ARTICLE. IF,  
5 after hearing PURSUANT TO SUCH SECTION, the court [is satisfied] DETER-  
6 MINES by competent proof that the respondent without just cause failed  
7 to comply with such terms and conditions, the court may ADJOURN THE  
8 MATTER FOR A NEW DISPOSITIONAL HEARING IN ACCORDANCE WITH SUBDIVISION  
9 (B) OR (C) OF SECTION SEVEN HUNDRED FORTY-NINE OF THIS ARTICLE. THE  
10 COURT MAY revoke the order of probation and proceed to make any order  
11 that might have been made at the time the order of probation was  
12 entered.

13 S 8. Section 779-a of the family court act, as amended by chapter 309  
14 of the laws of 1996, is amended to read as follows:

15 S 779-a. [Declaration of delinquency concerning juvenile delinquents  
16 and persons in need of supervision.] PETITION AND HEARING ON VIOLATION  
17 OF ORDER OF PROBATION OR SUSPENDED JUDGEMENT. (A) If, at any time during  
18 the period of [a disposition of] probation, the [court] PETITIONER,  
19 PROBATION SERVICE OR APPROPRIATE PRESENTMENT AGENCY has reasonable cause  
20 to believe the respondent has violated a condition of the disposition,  
21 [it] THE PETITIONER, PROBATION SERVICE OR APPROPRIATE PRESENTMENT AGENCY  
22 may [declare the respondent delinquent and] file a [written declaration  
23 of delinquency. Upon such filing, the respondent shall be declared  
24 delinquent of his disposition of probation and such disposition shall be  
25 tolled. The] VIOLATION PETITION.

26 (B) THE PETITION MUST BE VERIFIED AND SUBSCRIBED BY THE PETITIONER,  
27 PROBATION SERVICE OR THE APPROPRIATE PRESENTMENT AGENCY. THE PETITION  
28 MUST SPECIFY THE CONDITION OR CONDITIONS OF THE ORDER VIOLATED AND A  
29 REASONABLE DESCRIPTION OF THE DATE, TIME, PLACE AND MANNER IN WHICH THE  
30 VIOLATION OCCURRED. NON-HEARSAY ALLEGATIONS OF THE FACTUAL PART OF THE  
31 PETITION OR OF ANY SUPPORTING DEPOSITIONS MUST ESTABLISH, IF TRUE, EVERY  
32 VIOLATION CHARGED.

33 (C) UPON THE FILING OF A VIOLATION PETITION, THE court [then must  
34 promptly take reasonable and appropriate action] SHALL ISSUE A SUMMONS  
35 OR WARRANT IN ACCORDANCE WITH SECTION SEVEN HUNDRED TWENTY-FIVE OF THIS  
36 ARTICLE to cause the respondent to appear before [it for the purpose of  
37 enabling] the court [to make a final determination with respect to the  
38 alleged delinquency. The]. WHERE THE RESPONDENT IS ON PROBATION PURSUANT  
39 TO SECTION SEVEN HUNDRED FIFTY-SEVEN OF THIS ARTICLE, THE time for  
40 prompt court action shall not be construed against the probation service  
41 when the respondent has absconded from probation supervision and the  
42 respondent's whereabouts are unknown. The court must be notified prompt-  
43 ly of the circumstances of any such probationers.

44 (D) IF A PETITION IS FILED UNDER SUBDIVISION (A) OF THIS SECTION, THE  
45 PERIOD OF PROBATION OR SUSPENDED JUDGMENT PRESCRIBED BY SECTION SEVEN  
46 HUNDRED FIFTY-FIVE OR SEVEN HUNDRED FIFTY-SEVEN OF THIS ARTICLE SHALL BE  
47 INTERRUPTED AS OF THE DATE OF THE FILING OF THE PETITION. SUCH INTER-  
48 RUPTION SHALL CONTINUE UNTIL A FINAL DETERMINATION OF THE PETITION OR  
49 UNTIL SUCH TIME AS THE RESPONDENT REACHES THE MAXIMUM AGE OF ACCEPTANCE  
50 INTO PLACEMENT WITH THE COMMISSIONER OF SOCIAL SERVICES. IF THE COURT  
51 DISMISSES THE VIOLATION PETITION, THE PERIOD OF INTERRUPTION SHALL BE  
52 CREDITED TO THE PERIOD OF PROBATION OR SUSPENDED JUDGMENT.

53 (E) HEARING ON VIOLATION. (I) THE COURT MAY NOT REVOKE AN ORDER OF  
54 PROBATION OR SUSPENDED JUDGMENT UNLESS THE COURT HAS FOUND BY COMPETENT  
55 PROOF THAT THE RESPONDENT HAS VIOLATED A CONDITION OF SUCH ORDER WITHOUT  
56 JUST CAUSE AND THAT THE RESPONDENT HAS HAD AN OPPORTUNITY TO BE HEARD.

1 THE RESPONDENT IS ENTITLED TO A HEARING PROMPTLY AFTER A VIOLATION PETI-  
2 TION HAS BEEN FILED. THE RESPONDENT IS ENTITLED TO COUNSEL AT ALL STAGES  
3 OF THE PROCEEDING AND MAY NOT WAIVE REPRESENTATION BY COUNSEL EXCEPT AS  
4 PROVIDED IN SECTION TWO HUNDRED FORTY-NINE-A OF THIS ACT.

5 (II) AT THE TIME OF THE RESPONDENT'S FIRST APPEARANCE FOLLOWING THE  
6 FILING OF A VIOLATION PETITION, THE COURT MUST:

7 (A) ADVISE THE RESPONDENT OF THE CONTENTS OF THE PETITION AND FURNISH  
8 A COPY TO THE RESPONDENT;

9 (B) ADVISE THE RESPONDENT THAT HE OR SHE IS ENTITLED TO COUNSEL AT ALL  
10 STAGES OF A PROCEEDING UNDER THIS SECTION AND APPOINT AN ATTORNEY PURSU-  
11 ANT TO SECTION TWO HUNDRED FORTY-NINE OF THIS ACT IF INDEPENDENT LEGAL  
12 REPRESENTATION IS NOT AVAILABLE TO THE RESPONDENT. IF PRACTICABLE, THE  
13 COURT SHALL APPOINT THE SAME ATTORNEY WHO REPRESENTED THE RESPONDENT IN  
14 THE ORIGINAL PROCEEDINGS UNDER THIS ARTICLE;

15 (C) DETERMINE WHETHER THE RESPONDENT SHOULD BE RELEASED OR DETAINED  
16 PURSUANT TO SECTION SEVEN HUNDRED TWENTY OF THIS ARTICLE; AND

17 (D) ASK THE RESPONDENT WHETHER HE OR SHE WISHES TO MAKE ANY STATEMENT  
18 WITH RESPECT TO THE VIOLATION. IF THE RESPONDENT MAKES A STATEMENT, THE  
19 COURT MAY ACCEPT IT AND BASE ITS DECISION UPON THE STATEMENT. THE  
20 PROVISIONS OF SECTION SEVEN HUNDRED FORTY-THREE OF THIS ARTICLE SHALL  
21 APPLY IN DETERMINING WHETHER A STATEMENT SHOULD BE ACCEPTED. IF THE  
22 COURT DOES NOT ACCEPT THE STATEMENT OR IF THE RESPONDENT DOES NOT MAKE A  
23 STATEMENT, THE COURT SHALL CONDUCT A HEARING.

24 (III) UPON REQUEST, THE COURT SHALL GRANT A REASONABLE ADJOURNMENT TO  
25 THE RESPONDENT TO PREPARE FOR THE HEARING.

26 (IV) AT THE HEARING, THE COURT MAY RECEIVE ANY RELEVANT, COMPETENT AND  
27 MATERIAL EVIDENCE. THE RESPONDENT MAY CROSS-EXAMINE WITNESSES AND PRES-  
28 ENT EVIDENCE ON HIS OR HER OWN BEHALF. THE COURT'S DETERMINATION MUST BE  
29 BASED UPON COMPETENT EVIDENCE.

30 (V) AT THE CONCLUSION OF THE HEARING, THE COURT MAY ADJOURN THE MATTER  
31 FOR A NEW DISPOSITIONAL HEARING IN ACCORDANCE WITH SUBDIVISION (B) OR  
32 (C) OF SECTION SEVEN HUNDRED FORTY-NINE OF THIS ARTICLE. THE COURT MAY  
33 REVOKE, CONTINUE OR MODIFY THE ORDER OF PROBATION OR SUSPENDED JUDGMENT.  
34 IF THE COURT REVOKES THE ORDER, IT SHALL ORDER A DIFFERENT DISPOSITION  
35 PURSUANT TO SUBDIVISION ONE OF SECTION SEVEN HUNDRED FIFTY-FOUR OF THIS  
36 ARTICLE AND SHALL MAKE FINDINGS IN ACCORDANCE WITH SUBDIVISION TWO OF  
37 SUCH SECTION. IF THE COURT CONTINUES THE ORDER OF PROBATION OR  
38 SUSPENDED JUDGMENT, IT SHALL DISMISS THE PETITION OF VIOLATION.

39 S 9. This act shall take effect on the ninetieth day after it shall  
40 have become a law and shall apply to orders of adjournment in contem-  
41 plation of dismissal issued and petitions for violations of probation,  
42 conditional discharge and suspended judgment filed on or after such  
43 effective date.