

STATE OF NEW YORK

5516--A

Cal. No. 766

2019-2020 Regular Sessions

IN SENATE

May 3, 2019

Introduced by Sen. MONTGOMERY -- (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 -- reported favorably from said committee, ordered to first and second report, amended on second report, ordered to a third reading, and to be reprinted as amended, retaining its place in the order of third reading

AN ACT to amend the family court act and the mental hygiene law, in relation to the determination of capacity to stand trial in juvenile delinquency proceedings in family court

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 1 of section 322.1 of the family court act, as amended by chapter 566 of the laws of 1994, is amended to read as follows:

1. At any proceeding under this article, the court must issue an order that the respondent be examined as provided herein when it is of the opinion that the respondent may be an incapacitated person. Notwithstanding the provisions of this or any other law, the court may direct that the examination be conducted on an outpatient basis ~~when~~. If the respondent is ~~not~~ in custody at the time the court issues an order of examination, the examination may be conducted at the place where the respondent is being held in custody. The court shall order that two qualified psychiatric examiners as defined in subdivision seven of section 730.10 of the criminal procedure law examine the respondent to determine if he or she is diagnosed to be mentally ill, ~~mentally retarded or~~ intellectually or developmentally disabled.

§ 2. Subdivision 4, paragraphs (a), (c) and (d) of subdivision 5 and subdivisions 6 and 7 of section 322.2 of the family court act, subdivisions 4, 6 and 7 and paragraph (c) of subdivision 5 as added by chapter 920 of the laws of 1982, paragraph (a) of subdivision 5 as amended by

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

LBD09846-03-9

1 section 69 of part WWW of chapter 59 of the laws of 2017, and paragraph
2 (d) of subdivision 5 as amended by chapter 41 of the laws of 2010, are
3 amended to read as follows:

4 4. If the court finds that there is probable cause to believe that the
5 respondent committed a misdemeanor, the respondent shall be committed to
6 the custody of the appropriate commissioner for a reasonable period not
7 to exceed ninety days. Unless the court specifies that such commitment
8 shall be in a residential facility, such commissioner having custody may
9 arrange for treatment in an appropriate facility or program, including
10 an outpatient program, in accordance with subdivision (e) of section
11 7.09 or subdivision (c-1) of section 13.09 respectively, of the mental
12 hygiene law. The court shall dismiss the petition on the issuance of the
13 order of commitment and such dismissal shall constitute a bar to further
14 prosecution of the charge or charges contained in the petition.

15 (a) If the court finds that there is probable cause to believe that
16 the respondent committed a felony, it shall order the respondent commit-
17 ted to the custody of the commissioner of mental health or the commis-
18 sioner of the office for people with developmental disabilities for an
19 initial period not to exceed one year from the date of such order.
20 Unless the court specifies that such commitment shall be in a residen-
21 tial facility, such commissioner having custody may arrange for treat-
22 ment in an appropriate facility or program, including an outpatient
23 program, in accordance with subdivision (e) of section 7.09 or subdivi-
24 sion (c-1) of section 13.09 respectively, of the mental hygiene law.
25 Such period may be extended annually upon further application to the
26 court by the commissioner having custody or his or her designee. Such
27 application must be made not more than sixty days prior to the expira-
28 tion of such period on forms that have been prescribed by the chief
29 administrator of the courts. At that time, the commissioner must give
30 written notice of the application to the respondent, the counsel repres-
31 enting the respondent and the mental hygiene legal service if the
32 respondent is at a residential facility. Upon receipt of such applica-
33 tion, the court must conduct a hearing to determine the issue of capaci-
34 ty. If, at the conclusion of a hearing conducted pursuant to this subdivi-
35 sion, the court finds that the respondent is no longer incapacitated,
36 he or she shall be returned to the family court for further proceedings
37 pursuant to this article. If the court is satisfied that the respondent
38 continues to be incapacitated, the court shall authorize continued
39 custody of the respondent by the commissioner in a facility or program
40 for a period not to exceed one year. Such extensions shall not continue
41 beyond a reasonable period of time necessary to determine whether the
42 respondent will attain the capacity to proceed to a fact finding hearing
43 in the foreseeable future but in no event shall continue beyond the
44 respondent's eighteenth birthday or, if the respondent was at least
45 sixteen years of age when the act was committed, beyond the respondent's
46 twenty-first birthday.

47 ~~(c) [If the court finds that there is probable cause to believe that~~
48 ~~the respondent has committed a designated felony act, the court shall~~
49 ~~require that treatment be provided in a residential facility within the~~
50 ~~appropriate office of the department of mental hygiene.~~

51 ~~(d)]~~ The commissioner shall review the condition of the respondent
52 within forty-five days after the respondent is committed to the custody
53 of the commissioner. He or she shall make a second review within ninety
54 days after the respondent is committed to his or her custody. Thereaft-
55 er, he or she shall review the condition of the respondent every ninety
56 days. The respondent and the counsel for the respondent, shall be noti-

1 fied of any such review and afforded an opportunity to be heard. The
2 commissioner having custody shall apply to the court for an order
3 dismissing the petition whenever he or she determines that there is a
4 substantial probability that the respondent will continue to be incapac-
5 itated for the foreseeable future. At the time of such application the
6 commissioner must give written notice of the application to the respond-
7 ent, the presentment agency and the mental hygiene legal service if the
8 respondent is at a residential facility. Upon receipt of such applica-
9 tion, the court may on its own motion conduct a hearing to determine
10 whether there is substantial probability that the respondent will
11 continue to be incapacitated for the foreseeable future, and it must
12 conduct such hearing if a demand therefor is made by the respondent or
13 the mental hygiene legal service within ten days from the date that
14 notice of the application was given to them. The respondent may apply to
15 the court for an order of dismissal on the same ground.

16 6. Any order pursuant to this section dismissing a petition shall not
17 preclude an application for voluntary or involuntary care and treatment
18 in a facility or program of the appropriate office of the department of
19 mental hygiene pursuant to the provisions of the mental hygiene law.
20 Unless the respondent is admitted pursuant to such an application he or
21 she shall be released.

22 7. If the commissioner having custody of a child committed to a resi-
23 dential facility pursuant to subdivision four or paragraph (a) of subdivi-
24 vision five of this section determines at any time that such child may
25 be more appropriately treated in a non-residential facility or on an
26 outpatient basis, he or she may arrange for such treatment. If the
27 commissioner having custody of a child committed to a residential facil-
28 ity pursuant to subdivisions four or five of this section determines at
29 any time that such child may be more appropriately treated in a non-re-
30 sidential facility or on an outpatient basis, he or she may petition the
31 family court for a hearing. If the court finds after a hearing that
32 treatment in a non-residential facility or on an outpatient basis would
33 be more appropriate for such child, the court shall modify its order of
34 commitment to [~~authorize~~] direct the commissioner to transfer [~~of such~~]
35 the child to a non-residential facility or arrange outpatient treatment.
36 Application for [~~such~~] a hearing to determine whether any child commit-
37 ted to a residential facility under subdivisions four or five of this
38 section may be more appropriately treated in a non-residential facility
39 or on an outpatient basis may be made by the respondent.

40 § 3. Subdivision (e) of section 7.09 of the mental hygiene law, as
41 amended by chapter 920 of the laws of 1982 and as relettered by chapter
42 509 of the laws of 1988, is amended to read as follows:

43 (e) The commissioner shall accept custody of a juvenile under an order
44 issued by the family court pursuant to the provisions of section 322.2
45 of the family court act. He or she may place the juvenile in any appro-
46 priate facility or program under his or her jurisdiction, but he or she
47 shall comply with any order requiring treatment in a residential facili-
48 ty made pursuant to [~~paragraph (c) of~~] subdivision four or five of
49 section 322.2 of the family court act. In determining the appropriate
50 placement, the commissioner shall be furnished with a copy of the find-
51 ings of the court pursuant to subdivision four or five of section 322.2
52 of the family court act and shall consider the nature of the act alleged
53 in such findings and the level of the juvenile's mental disability. The
54 commissioner shall review the condition of the juvenile in accordance
55 with the requirements of section 322.2 of the family court act and he or

1 she may petition the family court at any time for any relief authorized
2 by such section.

3 § 4. Subdivision (c) of section 13.09 of the mental hygiene law, as
4 amended by chapter 920 of the laws of 1982, is amended to read as
5 follows:

6 [~~(c)~~] (c-1) The commissioner shall accept custody of a juvenile under
7 an order issued by the family court pursuant to the provisions of
8 section 322.2 of the family court act. He or she may place the juvenile
9 in any appropriate facility or program under his or her jurisdiction,
10 but he or she shall comply with any order requiring treatment in a resi-
11 dential facility made pursuant to [~~paragraph (c) of~~] subdivision four or
12 five of section 322.2 of the family court act. In determining the appro-
13 priate placement, the commissioner shall be furnished with a copy of the
14 findings of the court pursuant to subdivision four or five of section
15 322.2 of the family court act and shall consider the nature of the act
16 alleged in such findings and the level of the juvenile's mental disabil-
17 ity. The commissioner shall review the condition of the juvenile in
18 accordance with the requirements of section 322.2 of the family court
19 act and he or she may petition the family court at any time for any
20 relief authorized by such section.

21 § 5. This act shall take effect on the ninetieth day after it shall
22 have become a law; provided, however, that the amendments made to para-
23 graph (a) of subdivision 5 of section 322.2 of the family court act made
24 by section two of this act shall take effect on the same date and in the
25 same manner as section 69 of part WWW of chapter 59 of the laws of 2017,
26 takes effect.