

STATE OF NEW YORK

9173

IN ASSEMBLY

February 7, 2022

Introduced by M. of A. CUSICK -- read once and referred to the Committee on Codes

AN ACT to amend the executive law and the criminal procedure law, in relation to the detention of certain juveniles charged with certain felony crimes and the handling of such cases

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

1 Section 1. Paragraph (a) of subdivision 3 of section 259-i of the
2 executive law is amended by adding a new subparagraph (ix) to read as
3 follows:

4 (ix) Notwithstanding any other provisions of this paragraph, when a
5 person sixteen years of age or older and under the age of eighteen is
6 charged with a class A felony, a violent felony offense, or a felony
7 involving the use or possession of a firearm taken into custody pursuant
8 to this section, such person shall be detained in a place certified by
9 the office of children and family services as a secure or specialized
10 secure detention facility, as appropriate or, when such a facility is
11 unavailable, the officer having custody of such person or other appro-
12 priate official shall petition the sentencing court for approval to
13 lodge the person in a local correctional facility. If the court finds
14 that it would be in the interest of justice for the alleged violator to
15 be lodged in a local correctional facility, the court shall issue a
16 written order so indicating, and shall hold a hearing at least once
17 every thirty days to determine if such lodging continues to be in the
18 interest of justice. No alleged violator to whom the provisions of this
19 subparagraph apply may be detained in a local correctional facility for
20 longer than one hundred eighty days unless the violator waives such
21 limitation or the court finds good cause for such continued detention.
22 No alleged violator under the age of eighteen to whom the provisions of
23 this section apply may have sight or sound contact with adults incarcer-
24 ated in the local correctional facility.

25 § 2. Section 510.15 of the criminal procedure law is amended by
26 adding a new subdivision 3 to read as follows:

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

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1 3. (a) When a principal sixteen years of age or older charged with a
2 class A felony, a violent felony offense, or a felony involving the use
3 or possession of a firearm who is committed to the custody of the sher-
4 iff pursuant to this section is unable to be lodged in a detention
5 facility because (1) the principal has committed violent acts while
6 lodged in a detention facility that make continued lodging in the facil-
7 ity a threat to the safety of the principal or others or to the security
8 of the facility, or (2) a lack of available and accessible detention bed
9 capacity, the district attorney, sheriff or detention administering
10 agency may petition the court for approval to temporarily lodge the
11 principal in a local correctional facility, subject to the limitations
12 set forth in section five hundred-p of the correction law.

13 (b) No principal to whom the provisions of this section apply shall be
14 detained in a local correctional facility for longer than one hundred
15 eighty days unless the principal waives such limitation or the court
16 finds good cause for such continued detention. No principal under the
17 age of eighteen to whom the provisions of this section apply shall have
18 sight or sound contact with adults incarcerated in the local correction-
19 al facility. During any period in which a principal to whom the
20 provisions of this section applies is lodged in a local correctional
21 facility, the detention administering agency shall remain responsible
22 for assessing the health and well-being of the principal, consistent
23 with regulations promulgated by the office of children and family
24 services.

25 § 3. Paragraph (a) of subdivision 1 of section 722.23 of the criminal
26 procedure law, as amended by section 1-a of part WWW of chapter 59 of
27 the laws of 2017, is amended to read as follows:

28 (a) Following the arraignment of a defendant charged with a crime
29 committed when he or she was sixteen, or commencing October first, two
30 thousand nineteen, seventeen years of age, other than any class A felony
31 except for those defined in article two hundred twenty of the penal law,
32 a violent felony defined in section 70.02 of the penal law or a felony
33 listed in paragraph one or two of subdivision forty-two of section 1.20
34 of this chapter, a felony in violation of article two hundred sixty-five
35 of the penal law, or an offense set forth in the vehicle and traffic
36 law, the court [~~shall~~] may, but shall not be required to, order the
37 removal of the action to the family court in accordance with the appli-
38 cable provisions of article seven hundred twenty-five of this title
39 unless, within thirty calendar days of such arraignment, the district
40 attorney makes a motion to prevent removal of the action pursuant to
41 this subdivision. If the defendant fails to report to the probation
42 department as directed, the thirty day time period shall be tolled until
43 such time as he or she reports to the probation department.

44 § 4. This act shall take effect immediately.