S T A T E O F N E W Y O R K

3881

2009-2010 Regular Sessions

I N S E N A T E

April 2, 2009

Introduced by Sen. MONTGOMERY -- (at request of the Division of Probation and Correctional Alternatives) -- 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 juvenile delinquency preliminary procedures and persons in need of supervision

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

Section 1. Subdivision 9 of section 308.1 of the family court act, as added by chapter 920 of the laws of 1982, is amended to read as follows:

9. Efforts at adjustment pursuant to rules of court under this section may not extend for a period of more than [two] SIX months [without leave of the court, which may extend the period for an additional two months].

S 2. Subdivision 5 of section 351.1 of the family court act is amended by adding a new paragraph (c) to read as follows:

(C) IN ITS DISCRETION THE COURT MAY EXCEPT FROM DISCLOSURE A PART OR PARTS OF THE REPORTS OR MEMORANDA WHICH ARE NOT RELEVANT TO A PROPER DISPOSITION, OR SOURCES OF INFORMATION WHICH HAVE BEEN OBTAINED ON A PROMISE OF CONFIDENTIALITY, OR ANY OTHER PORTION THEREOF, DISCLOSURE OF WHICH WOULD NOT BE IN THE INTEREST OF JUSTICE, PROVIDED, HOWEVER, WHEN A CHILD IS PLACED IN ACCORDANCE WITH SECTION 353.3 OF THIS PART, THE COURT SHALL CONSIDER WHETHER ANY EXCEPTED MATERIAL SHALL BE PROVIDED TO THE CUSTODIAL AGENCY. IN ALL CASES WHERE A PART OR PARTS OF THE REPORTS OR MEMORANDA ARE NOT DISCLOSED, THE COURT SHALL STATE FOR THE RECORD THAT A PART OR PARTS OF THE REPORTS OR MEMORANDA HAVE BEEN EXCEPTED AND THE REASONS FOR ITS ACTION. THE ACTION OF THE COURT EXCEPTING INFORMATION FROM DISCLOSURE SHALL BE SUBJECT TO REVIEW ON ANY APPEAL FROM THE ORDER OF DISPOSITION. IF SUCH REPORTS OR MEMORANDA ARE MADE AVAILABLE TO THE RESPONDENT OR HIS OR HER LAW GUARDIAN OR COUNSEL, THEY SHALL ALSO BE MADE AVAILABLE TO THE COUNSEL PRESENTING THE PETITION PURSUANT TO

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

LBD07185-03-9

SECTION TWO HUNDRED FIFTY-FOUR OF THIS CHAPTER AND, IN THE COURT'S DISCRETION, TO ANY OTHER ATTORNEY REPRESENTING THE PETITIONER.

S 3. Subdivision 6 of section 351.1 of the family court act, as added by chapter 920 of the laws of 1982 and as renumbered by chapter 418 of the laws of 1986, is amended to read as follows:

6. All reports or memoranda prepared or obtained by the probation service for the purpose of a dispositional hearing shall be deemed confidential information furnished to the court and shall be subject to disclosure solely in accordance with this section or as otherwise provided for by law. Except as provided under section 320.5 OF THIS ARTICLE such reports or memoranda shall not be furnished to the court prior to the entry of an order pursuant to section 345.1 OF THIS ARTICLE. A PROBATION DEPARTMENT MUST MAKE AVAILABLE A COPY OF THE PREDISPOSITIONAL REPORT AND ANY DIAGNOSTIC ASSESSMENT TO A REQUESTING PROBATION DEPARTMENT WITH RESPONSIBILITY FOR CONDUCTING AN INVESTIGATION OR PERFORMING SUPERVISION OF A RESPONDENT OR TO THE FAMILY COURT FOR PURPOSES OF ADJUDICATION OR DISPOSITION.

S 4. Subdivisions 1 and 2 of section 750 of the family court act, subdivision 1 as amended by chapter 813 of the laws of 1985 and subdivision 2 as amended by chapter 106 of the laws of 1987, are amended to read as follows:

1. All reports or memoranda prepared or obtained by the probation service shall be deemed confidential information furnished to the court and shall be subject to disclosure solely in accordance with this section or as otherwise provided for by law. Except as provided in section seven hundred thirty-five of this article, such reports or memoranda shall not be furnished to the court prior to the completion of the fact-finding hearing and the making of the required findings. A PROBATION DEPARTMENT MUST MAKE AVAILABLE A COPY OF THE PREDISPOSITIONAL REPORT AND ANY DIAGNOSTIC ASSESSMENT TO A REQUESTING PROBATION DEPARTMENT WITH RESPONSIBILITY FOR CONDUCTING AN INVESTIGATION OR PERFORMING SUPERVISION OF A RESPONDENT OR TO THE FAMILY COURT FOR PURPOSES OF ADJUDICATION OR DISPOSITION.

2. After the completion of the fact-finding hearing and the making of the required findings and prior to the dispositional hearing, the reports or memoranda prepared or obtained by the probation service and furnished to the court shall be made available by the court for examination and copying by the child's law guardian or counsel or by the respondent if he is not represented by a law guardian or other counsel. All diagnostic assessments and probation investigation reports shall be submitted to the court at least five court days prior to the commencement of the dispositional hearing. In its discretion the court may except from disclosure a part or parts of the reports or memoranda which are not relevant to a proper disposition, or sources of information which have been obtained on a promise of confidentiality, or any other portion thereof, disclosure of which would not be in the interest of justice. HOWEVER, WHERE THE CHILD IS PLACED IN ACCORDANCE WITH SECTION SEVEN HUNDRED FIFTY-SIX OF THIS PART, THE COURT SHALL CONSIDER WHETHER ANY SUCH EXCEPTED MATERIAL SHALL BE PROVIDED TO THE CUSTODIAL AGENCY. In all cases where a part or parts of the reports or memoranda are not disclosed, the court shall state for the record that a part or parts of the reports or memoranda have been excepted and the reasons for its action. The action of the court excepting information from disclosure shall be subject to review on any appeal from the order of disposition. If such reports or memoranda are made available to respondent or his law guardian or counsel, they shall also be made available to the counsel

presenting the petition pursuant to section two hundred fifty-four OF THIS ACT and, in the court's discretion, to any other attorney representing the petitioner.

S 5. Section 779-a of the family court act, as amended by chapter 309 of the laws of 1996, is amended to read as follows:

S 779-a. Declaration of delinquency concerning [juvenile delinquents and] persons in need of supervision. If, at any time during the period of a disposition of probation, the court has reasonable cause to believe the respondent has violated a condition of the disposition, it may declare the respondent delinquent and file a written declaration of delinquency. Upon such filing, the respondent shall be declared delinquent of his disposition of probation and such disposition shall be tolled AS OF THE DATE OF THE FILING OF THE PETITION. The court then must promptly take reasonable and appropriate action to cause the respondent to appear before it for the purpose of enabling the court to make a final determination with respect to the alleged delinquency. The time for prompt court action shall not be construed against the probation service when the respondent has absconded from probation supervision and the respondent's whereabouts are unknown. The court must be notified promptly of the circumstances of any such probationers.

S 6. This act shall take effect on the sixtieth day after it shall have become a law.