

8505

2009-2010 Regular Sessions

I N A S S E M B L Y

May 26, 2009

Introduced by M. of A. SCARBOROUGH, COOK -- Multi-Sponsored by -- M. of A. BRADLEY, COLTON, JOHN, TITONE, TOWNS -- (at request of the Office of Court Administration) -- read once and referred 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 237 of the laws of 1991, 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 [paragraph
17 six-a of subdivision (a) of] section [19.07] 19.25 of the mental hygiene
18 law. [Upon ex parte motion by the presentment agency, or upon the
19 court's own motion, made at the time the order is issued or at] AT any
20 time during [its] THE duration OF AN ORDER ISSUED PURSUANT TO THIS
21 SECTION, the court may restore the matter to the calendar IN ACCORDANCE
22 WITH SUBDIVISION FOUR OF THIS SECTION. If the proceeding is not

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

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1 restored, the petition is, at the expiration of the order, deemed to
2 have been dismissed by the court in furtherance of justice.

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

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

33 S 3. Section 353.3 of the family court act is amended by adding a new
34 subdivision 11 to read as follows:

35 11. WHERE THE RESPONDENT IS PLACED PURSUANT TO SUBDIVISION TWO OR
36 THREE OF THIS SECTION AND IS ABSENT FROM THE FACILITY OR AUTHORIZED
37 AGENCY WITHOUT THE CONSENT OF THE DIRECTOR OF THE FACILITY OR AGENCY,
38 THE ABSENCE SHALL INTERRUPT THE CALCULATION OF TIME OF SUCH PLACEMENT
39 AND SUCH INTERRUPTION SHALL CONTINUE UNTIL THE CHILD'S RETURN TO THE
40 FACILITY OR AGENCY; PROVIDED, HOWEVER, THAT A TIMELY PERMANENCY HEARING
41 SHALL BE HELD FOR THE RESPONDENT, NOTWITHSTANDING SUCH INTERRUPTION. ANY
42 TIME SPENT IN DETENTION BETWEEN THE DATE OF SUCH ABSENCE WITHOUT LEAVE
43 AND THE RETURN OF THE CHILD TO THE FACILITY OR AGENCY SHALL BE CREDITED
44 AGAINST THE TIME OF PLACEMENT IF THE DETENTION WAS DUE TO A SURRENDER OR
45 ARREST DUE TO THE ABSENCE, OR IF THE DETENTION WAS DUE TO AN ARREST THAT
46 DID NOT CULMINATE IN A PETITION, ADJUDICATION OR ADJUSTMENT.

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

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

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

9 5. If the court determines THAT there was no violation of probation OR
10 CONDITIONAL DISCHARGE by the respondent, the period of interruption
11 shall be credited to the period of probation OR CONDITIONAL DISCHARGE,
12 AS APPLICABLE.

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

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

20 (I) COMMITTED THE ACT OR ACTS TO WHICH AN ADMISSION IS BEING ENTERED;
21 (II) IS VOLUNTARILY WAIVING HIS OR HER RIGHT TO A FACT-FINDING HEAR-
22 ING; AND

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

24 THE PROVISIONS OF THIS SUBDIVISION SHALL NOT BE WAIVED.

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

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

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

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

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

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

53 (C) A respondent [is] brought before the court for failure to comply
54 with reasonable terms and conditions of an order of probation issued
55 under SECTION SEVEN HUNDRED FIFTY-SEVEN OF this article [and if,] SHALL
56 BE DEALT WITH IN ACCORDANCE WITH SECTION SEVEN HUNDRED SEVENTY-NINE-A OF

1 THIS PART. IF, after hearing PURSUANT TO SUCH SECTION, the court [is
2 satisfied] DETERMINES by competent proof that the respondent without
3 just cause failed to comply with such terms and conditions, the court
4 may ADJOURN THE MATTER FOR A NEW DISPOSITIONAL HEARING IN ACCORDANCE
5 WITH SUBDIVISION (B) OR (C) OF SECTION SEVEN HUNDRED FORTY-NINE OF THIS
6 ARTICLE. THE COURT MAY revoke the order of probation and proceed to make
7 any order that might have been made at the time the order of probation
8 was entered.

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

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

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

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

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

49 (E) (I) THE COURT MAY NOT REVOKE AN ORDER OF PROBATION OR SUSPENDED
50 JUDGMENT UNLESS THE COURT HAS FOUND BY COMPETENT PROOF THAT THE RESPOND-
51 ENT HAS VIOLATED A CONDITION OF SUCH ORDER WITHOUT JUST CAUSE AND THAT
52 THE RESPONDENT HAS HAD AN OPPORTUNITY TO BE HEARD. THE RESPONDENT IS
53 ENTITLED TO A HEARING PROMPTLY AFTER A VIOLATION PETITION HAS BEEN
54 FILED. THE RESPONDENT IS ENTITLED TO COUNSEL AT ALL STAGES OF THE
55 PROCEEDING AND MAY NOT WAIVE REPRESENTATION BY COUNSEL EXCEPT AS
56 PROVIDED IN SECTION TWO HUNDRED FORTY-NINE-A OF THIS ACT.

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

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

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

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

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

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

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

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

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