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

3876

2009-2010 Regular Sessions

I N S E N A T E

April 2, 2009

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

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:

Section 1. Subdivision 1 of section 315.3 of the family court act, as amended by chapter 237 of the laws of 1991, is amended to read as follows:

1. Except where the petition alleges that the respondent has committed a designated felony act, the court may at any time prior to the entering of a finding under section 352.1 and with the consent of the respondent order that the proceeding be "adjourned in contemplation of dismissal". An adjournment in contemplation of dismissal is an adjournment of the proceeding, for a period not to exceed six months, with a view to ultimate dismissal of the petition in furtherance of justice. Upon issuing such an order, providing such terms and conditions as the court deems appropriate, the court must release the respondent. The court may, as a condition of an adjournment in contemplation of dismissal order, in cases where the record indicates that the consumption of alcohol may have been a contributing factor, require the respondent to attend and complete an alcohol awareness program established pursuant to [paragraph six-a of subdivision (a) of] section [19.07] 19.25 of the mental hygiene law. [Upon ex parte motion by the presentment agency, or upon the court's own motion, made at the time the order is issued or at] AT any time during [its] THE duration OF AN ORDER ISSUED PURSUANT TO THIS SECTION, the court may restore the matter to the calendar IN ACCORDANCE 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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restored, the petition is, at the expiration of the order, deemed to have been dismissed by the court in furtherance of justice.

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

4. AN APPLICATION TO RESTORE THE MATTER TO THE CALENDAR IN ACCORDANCE WITH SUBDIVISION ONE OF THIS SECTION SHALL BE IN THE FORM OF A VERIFIED PETITION WHICH SHALL BE SERVED ON THE RESPONDENT, WHO SHALL HAVE AN OPPORTUNITY TO BE HEARD WITH RESPECT THERETO. THE PETITION SHALL STATE THE FACTUAL BASIS FOR THE RESTORATION, INCLUDING THE CONDITION OR CONDITIONS ALLEGED TO HAVE BEEN VIOLATED AND THE TIME, PLACE AND MANNER IN WHICH SUCH VIOLATION OCCURRED. THE RESPONDENT IS ENTITLED TO COUNSEL AT ALL STAGES OF A PROCEEDING UNDER THIS SECTION, AND THE COURT SHALL ADVISE THE RESPONDENT OF SUCH RIGHT AT THE INITIAL APPEARANCE ON ANY PETITION FILED HEREUNDER. UPON REQUEST, THE COURT SHALL GRANT A REASONABLE ADJOURNMENT TO THE RESPONDENT IN ORDER TO RESPOND TO THE PETITION AND, IF THE FACTUAL ALLEGATIONS OF THE PETITION ARE CONTESTED, TO PREPARE FOR A HEARING. IF THE COURT DETERMINES THAT THE RESPONDENT SHOULD BE DETAINED IN ACCORDANCE WITH THE CRITERIA IN SUBDIVISION THREE OF SECTION 320.5, THE COURT SHALL HEAR AND DETERMINE THE PETITION WITHIN THREE DAYS; PROVIDED, HOWEVER, THAT FOR GOOD CAUSE SHOWN, THE COURT MAY ADJOURN THE MATTER FOR NOT MORE THAN THREE ADDITIONAL DAYS. IF, AFTER HEARING THE PETITION, THE COURT FINDS THAT THE PRESENTMENT AGENCY HAS DEMONSTRATED BY RELEVANT AND MATERIAL EVIDENCE THAT ONE OR MORE CONDITIONS OF THE ORDER HAVE BEEN VIOLATED, THE COURT SHALL STATE ON THE RECORD THE REASONS FOR SUCH DETERMINATION, GRANT THE PETITION, RESTORE THE MATTER TO THE CALENDAR AND SCHEDULE THE PROCEEDING FOR A FACT-FINDING HEARING OR DISPOSITIONAL HEARING, AS APPLICABLE. UPON FILING THE PETITION, THE PERIOD OF THE ADJOURNMENT IN CONTEMPLATION OF DISMISSAL SHALL BE INTERRUPTED. SUCH INTERRUPTION SHALL CONTINUE UNTIL SUCH TIME AS THE COURT DETERMINES THE PETITION. IF THE COURT DENIES THE PETITION, THE PERIOD DURING WHICH THE PETITION WAS PENDING SHALL BE CREDITED TO THE PERIOD OF THE ADJOURNMENT IN CONTEMPLATION OF DISMISSAL.

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

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

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

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

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

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

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

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

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

(II) IS VOLUNTARILY WAIVING HIS OR HER RIGHT TO A FACT-FINDING HEARING; AND

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

THE PROVISIONS OF THIS SUBDIVISION SHALL NOT BE WAIVED.

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

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

S 776. Failure to comply with terms and conditions of suspended judgment. [If a] A respondent [is] brought before the court for failure to comply with reasonable terms and conditions of [a] AN ORDER OF suspended judgment [issued under this article and if,] SHALL BE DEALT WITH IN ACCORDANCE WITH SECTION SEVEN HUNDRED SEVENTY-NINE-A OF THIS PART. IF, after hearing, the court [is satisfied] DETERMINES by competent proof that the respondent WITHOUT JUST CAUSE failed to comply with such terms and conditions, 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 the [suspension] ORDER of SUSPENDED judgment and proceed to make any order that might have been made at the time judgment was suspended.

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

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

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

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

THIS PART. IF, after hearing PURSUANT TO SUCH SECTION, the court [is satisfied] DETERMINES by competent proof that the respondent without just cause failed to comply with such terms and conditions, 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 the order of probation and proceed to make any order that might have been made at the time the order of probation was entered.

S 8. 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.] PETITION AND HEARING ON VIOLATION OF ORDER OF PROBATION OR SUSPENDED JUDGMENT. (A) If, at any time during the period of [a disposition of] probation, OR SUSPENDED JUDGMENT the [court] PETITIONER, PROBATION SERVICE OR APPROPRIATE PRESENTMENT AGENCY has reasonable cause to believe THAT the respondent has violated a condition of the disposition, [it] THE PETITIONER, PROBATION SERVICE OR APPROPRIATE PRESENTMENT AGENCY 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. The] VIOLATION PETITION.

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

(C) UPON THE FILING OF A VIOLATION PETITION, THE court [then must promptly take reasonable and appropriate action] SHALL ISSUE A SUMMONS OR WARRANT IN ACCORDANCE WITH SECTION SEVEN HUNDRED TWENTY-FIVE OF THIS ARTICLE 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] WHERE THE RESPONDENT IS ON PROBATION PURSUANT TO SECTION SEVEN HUNDRED FIFTY-SEVEN OF THIS ARTICLE, 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.

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

(E) (I) THE COURT MAY NOT REVOKE AN ORDER OF PROBATION OR SUSPENDED JUDGMENT UNLESS THE COURT HAS FOUND BY COMPETENT PROOF THAT THE RESPONDENT HAS VIOLATED A CONDITION OF SUCH ORDER WITHOUT JUST CAUSE AND THAT THE RESPONDENT HAS HAD AN OPPORTUNITY TO BE HEARD. THE RESPONDENT IS ENTITLED TO A HEARING PROMPTLY AFTER A VIOLATION PETITION HAS BEEN FILED. THE RESPONDENT IS ENTITLED TO COUNSEL AT ALL STAGES OF THE PROCEEDING AND MAY NOT WAIVE REPRESENTATION BY COUNSEL EXCEPT AS 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.