

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:

1 Section 1. Subdivision 9 of section 308.1 of the family court act, as  
2 added by chapter 920 of the laws of 1982, is amended to read as follows:  
3 9. Efforts at adjustment pursuant to rules of court under this section  
4 may not extend for a period of more than [two] SIX months [without leave  
5 of the court, which may extend the period for an additional two months].  
6 S 2. Subdivision 5 of section 351.1 of the family court act is amended  
7 by adding a new paragraph (c) to read as follows:  
8 (C) IN ITS DISCRETION THE COURT MAY EXCEPT FROM DISCLOSURE A PART OR  
9 PARTS OF THE REPORTS OR MEMORANDA WHICH ARE NOT RELEVANT TO A PROPER  
10 DISPOSITION, OR SOURCES OF INFORMATION WHICH HAVE BEEN OBTAINED ON A  
11 PROMISE OF CONFIDENTIALITY, OR ANY OTHER PORTION THEREOF, DISCLOSURE OF  
12 WHICH WOULD NOT BE IN THE INTEREST OF JUSTICE, PROVIDED, HOWEVER, WHEN A  
13 CHILD IS PLACED IN ACCORDANCE WITH SECTION 353.3 OF THIS PART, THE COURT  
14 SHALL CONSIDER WHETHER ANY EXCEPTED MATERIAL SHALL BE PROVIDED TO THE  
15 CUSTODIAL AGENCY. IN ALL CASES WHERE A PART OR PARTS OF THE REPORTS OR  
16 MEMORANDA ARE NOT DISCLOSED, THE COURT SHALL STATE FOR THE RECORD THAT A  
17 PART OR PARTS OF THE REPORTS OR MEMORANDA HAVE BEEN EXCEPTED AND THE  
18 REASONS FOR ITS ACTION. THE ACTION OF THE COURT EXCEPTING INFORMATION  
19 FROM DISCLOSURE SHALL BE SUBJECT TO REVIEW ON ANY APPEAL FROM THE ORDER  
20 OF DISPOSITION. IF SUCH REPORTS OR MEMORANDA ARE MADE AVAILABLE TO THE  
21 RESPONDENT OR HIS OR HER LAW GUARDIAN OR COUNSEL, THEY SHALL ALSO BE  
22 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.

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

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

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

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

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

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

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

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

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

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