

10520

I N   A S S E M B L Y

June 1, 2012

---

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Paulin, Crespo, Jaffee, Galef, Magee, J. Rivera, P. Rivera, Titone) -- (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 535 of the laws of 2011, 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 [of]  
17    subdivision (a) of section [19.07] 19.25 of the mental hygiene law. The  
18    court may, as a condition of an adjournment in contemplation of dismissal  
19    order, in cases where the record indicates that the respondent is an  
20    eligible person as defined in section four hundred fifty-eight-1 of the  
21    social services law and has allegedly committed an eligible offense as  
22    defined in such section, direct the respondent to attend and complete an  
23    education reform program established pursuant to section four hundred  
24    fifty-eight-1 of the social services law. [Upon ex parte motion by the  
25    presentment agency, or upon the court's own motion, made at the time the

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

LBD15909-01-2

1 order is issued or at] AT any time during [its] THE duration OF AN ORDER  
2 ISSUED PURSUANT TO THIS SECTION, the court may restore the matter to the  
3 calendar IN ACCORDANCE WITH SUBDIVISION FOUR OF THIS SECTION. If the  
4 proceeding is not restored, the petition is, at the expiration of the  
5 order, deemed to have been dismissed by the court in furtherance of  
6 justice.

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

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

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

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

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

54 2. The petition must be verified and subscribed by the probation  
55 service or the appropriate presentment agency. Such petition must stipu-  
56 late the condition or conditions of the order violated and a reasonable

1 description of the time, place and manner in which the violation  
2 occurred. Non-hearsay allegations OR ALLEGATIONS MADE UPON INFORMATION  
3 AND BELIEF of the factual part of the petition or of any supporting  
4 depositions must establish, if true, every violation charged.

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

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

17 S 5. Subdivision (h) of section 735 of the family court act, as added  
18 by section 7 of part E of chapter 57 of the laws of 2005, is amended to  
19 read as follows:

20 (h) No statement made to the designated lead agency or to any agency  
21 or organization to which the potential respondent HAS BEEN REFERRED,  
22 prior to the filing of the petition, or if the petition has been filed,  
23 prior to the time the respondent has been notified that attempts at  
24 diversion will not be made or have been terminated, or prior to the  
25 commencement of a fact-finding hearing if attempts at diversion have not  
26 terminated previously, may be admitted into evidence at a fact-finding  
27 hearing or, if the proceeding is transferred to a criminal court, at any  
28 time prior to a conviction.

29 S 6. The family court act is amended by adding a new section 743 to  
30 read as follows:

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

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

39 (III) IS AWARE OF THE POSSIBLE SPECIFIC DISPOSITIONAL ORDERS.  
40 THE PROVISIONS OF THIS SUBDIVISION SHALL NOT BE WAIVED.

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

45 S 7. Section 776 of the family court act is amended to read as  
46 follows:

47 S 776. Failure to comply with terms and conditions of suspended judg-  
48 ment. [If a] A respondent [is] brought before the court for failure to  
49 comply with reasonable terms and conditions of [a] AN ORDER OF suspended  
50 judgment [issued under this article and if,] SHALL BE SUBJECT TO SECTION  
51 SEVEN HUNDRED SEVENTY-NINE-A OF THIS PART. IF, after hearing, the court  
52 [is satisfied] DETERMINES by competent proof that the respondent WITHOUT  
53 JUST CAUSE failed to comply with such terms and conditions, the court  
54 may ADJOURN THE MATTER FOR A NEW DISPOSITIONAL HEARING IN ACCORDANCE  
55 WITH SUBDIVISION (B) OR (C) OF SECTION SEVEN HUNDRED FORTY-NINE OF THIS  
56 ARTICLE. THE COURT MAY revoke the [suspension] ORDER of SUSPENDED judg-

ment and proceed to make any order that might have been made at the time judgment was suspended.

S 8. 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 SUBJECT TO SECTION SEVEN HUNDRED SEVENTY-NINE-A OF THIS ARTICLE. 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 9. 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 JUDGEMENT. (A) If, at any time during the period of [a disposition of] probation, the [court] PETITIONER, PROBATION SERVICE OR APPROPRIATE PRESENTMENT AGENCY has reasonable cause to believe 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) HEARING ON VIOLATION. (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 10. 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.