

3831--A

2013-2014 Regular Sessions

I N S E N A T E

February 21, 2013

Introduced by Sen. GALLIVAN -- (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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 al 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

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

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1 defined in such section, direct the respondent to attend and complete an
2 education reform program established pursuant to section four hundred
3 fifty-eight-1 of the social services law. [Upon ex parte motion by the
4 presentment agency, or upon the court's own motion, made at the time the
5 order is issued or at] AT any time during [its] THE duration OF AN ORDER
6 ISSUED PURSUANT TO THIS SECTION, the court may restore the matter to the
7 calendar IN ACCORDANCE WITH SUBDIVISION FOUR OF THIS SECTION. If the
8 proceeding is not restored, the petition is, at the expiration of the
9 order, deemed to have been dismissed by the court in furtherance of
10 justice.

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

13 4. AN APPLICATION TO RESTORE THE MATTER TO THE CALENDAR IN ACCORDANCE
14 WITH SUBDIVISION ONE OF THIS SECTION SHALL BE IN THE FORM OF A VERIFIED
15 PETITION WHICH SHALL BE SERVED ON THE RESPONDENT, WHO SHALL HAVE AN
16 OPPORTUNITY TO BE HEARD WITH RESPECT THERETO. THE PETITION SHALL STATE
17 THE FACTUAL BASIS FOR THE RESTORATION, INCLUDING THE CONDITION OR CONDI-
18 TIONS ALLEGED TO HAVE BEEN VIOLATED AND THE TIME, PLACE AND SPECIFIC
19 MANNER IN WHICH SUCH VIOLATION OCCURRED. THE RESPONDENT IS ENTITLED TO
20 COUNSEL AT ALL STAGES OF A PROCEEDING UNDER THIS SECTION, AND THE COURT
21 SHALL ADVISE THE RESPONDENT OF SUCH RIGHT AT THE INITIAL APPEARANCE ON
22 ANY PETITION FILED HEREUNDER. UPON REQUEST, THE COURT SHALL GRANT A
23 REASONABLE ADJOURNMENT TO THE RESPONDENT IN ORDER TO RESPOND TO THE
24 PETITION AND TO PREPARE FOR A HEARING. IF THE COURT DETERMINES THAT THE
25 RESPONDENT SHOULD BE DETAINED IN ACCORDANCE WITH SUBDIVISIONS THREE AND
26 FIVE OF SECTION 320.5, THE COURT SHALL HEAR AND DETERMINE THE PETITION
27 WITHIN THREE DAYS; PROVIDED, HOWEVER, THAT FOR GOOD CAUSE SHOWN, THE
28 COURT MAY ADJOURN THE MATTER FOR NOT MORE THAN THREE ADDITIONAL DAYS.
29 IF, AFTER HEARING THE PETITION, THE COURT FINDS THAT THE PRESENTMENT
30 AGENCY HAS DEMONSTRATED BY COMPETENT PROOF THAT ONE OR MORE CONDITIONS
31 OF THE ORDER HAVE BEEN VIOLATED IN AN IMPORTANT RESPECT AND THAT SUCH
32 VIOLATION OR VIOLATIONS WERE WITHOUT JUST CAUSE, THE COURT SHALL STATE
33 ON THE RECORD THE REASONS FOR SUCH DETERMINATION, GRANT THE PETITION,
34 RESTORE THE MATTER TO THE CALENDAR AND SCHEDULE THE PROCEEDING FOR A
35 FACT-FINDING HEARING OR DISPOSITIONAL HEARING, AS APPLICABLE. UPON
36 FILING THE PETITION, THE PERIOD OF THE ADJOURNMENT IN CONTEMPLATION OF
37 DISMISSAL SHALL BE INTERRUPTED. SUCH INTERRUPTION SHALL CONTINUE UNTIL
38 SUCH TIME AS THE COURT DETERMINES THE PETITION. IF THE COURT DENIES THE
39 PETITION, THE PERIOD DURING WHICH THE PETITION WAS PENDING SHALL BE
40 CREDITED TO THE PERIOD OF THE ADJOURNMENT IN CONTEMPLATION OF DISMISSAL.

41 S 3. Subdivisions 4 and 5 of section 360.2 of the family court act, as
42 added by chapter 920 of the laws of 1982, are amended to read as
43 follows:

44 4. If a petition is filed under subdivision one, the period of
45 probation as prescribed by section 353.2 OR CONDITIONAL DISCHARGE AS
46 PRESCRIBED BY SECTION 353.1 shall be interrupted as of the date of the
47 filing of the petition. Such interruption shall continue until a final
48 determination as to the petition has been made by the court pursuant to
49 a hearing held in accordance with section 360.3 or until such time as
50 the respondent reaches the maximum age of acceptance into [a division
51 for youth] AN OFFICE OF CHILDREN AND FAMILY SERVICES facility.

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

1 S 4. Subdivision (h) of section 735 of the family court act, as added
2 by section 7 of part E of chapter 57 of the laws of 2005, is amended to
3 read as follows:

4 (h) No statement made to the designated lead agency or to any agency
5 or organization to which the potential respondent HAS BEEN REFERRED,
6 prior to the filing of the petition, or if the petition has been filed,
7 prior to the time the respondent has been notified that attempts at
8 diversion will not be made or have been terminated, or prior to the
9 commencement of a fact-finding hearing if attempts at diversion have not
10 terminated previously, may be admitted into evidence at a fact-finding
11 hearing or, if the proceeding is transferred to a criminal court, at any
12 time prior to a conviction.

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 SUBJECT TO SECTION
35 SEVEN HUNDRED SEVENTY-NINE-A OF THIS PART. IF, after hearing, the court
36 [is satisfied] DETERMINES by competent proof that the respondent WITHOUT
37 JUST CAUSE failed to comply with such terms and conditions, the court
38 may ADJOURN THE MATTER FOR A NEW DISPOSITIONAL HEARING IN ACCORDANCE
39 WITH SUBDIVISION (B) OR (C) OF SECTION SEVEN HUNDRED FORTY-NINE OF THIS
40 ARTICLE. THE COURT MAY revoke the [suspension] ORDER of SUSPENDED judg-
41 ment and proceed to make any order that might have been made at the time
42 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 SUBJECT TO SECTION SEVEN HUNDRED SEVENTY-NINE-A OF THIS ARTICLE. IF,

1 after hearing PURSUANT TO SUCH SECTION, the court [is satisfied] DETER-
2 MINES by competent proof that the respondent without just cause failed
3 to comply with such terms and conditions, the court may ADJOURN THE
4 MATTER FOR A NEW DISPOSITIONAL HEARING IN ACCORDANCE WITH SUBDIVISION
5 (B) OR (C) OF SECTION SEVEN HUNDRED FORTY-NINE OF THIS ARTICLE. THE
6 COURT MAY revoke the order of probation and proceed to make any order
7 that might have been made at the time the order of probation was
8 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, the [court] PETITIONER,
15 PROBATION SERVICE OR APPROPRIATE PRESENTMENT AGENCY has reasonable cause
16 to believe the respondent has violated a condition of the disposition,
17 [it] THE PETITIONER, PROBATION SERVICE OR APPROPRIATE PRESENTMENT AGENCY
18 may [declare the respondent delinquent and] file a [written declaration
19 of delinquency. Upon such filing, the respondent shall be declared
20 delinquent of his disposition of probation and such disposition shall be
21 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 SPECIFIC MANNER IN
26 WHICH THE VIOLATION OCCURRED. NON-HEARSAY ALLEGATIONS OF THE FACTUAL
27 PART OF THE PETITION OR OF ANY SUPPORTING DEPOSITIONS MUST ESTABLISH, IF
28 TRUE, EVERY VIOLATION CHARGED.

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

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

50 (E) HEARING ON VIOLATION. (I) THE COURT MAY NOT REVOKE AN ORDER OF
51 PROBATION OR SUSPENDED JUDGMENT UNLESS THE COURT HAS FOUND BY COMPETENT
52 PROOF THAT THE RESPONDENT HAS VIOLATED A CONDITION OF SUCH ORDER IN AN
53 IMPORTANT RESPECT AND WITHOUT JUST CAUSE AND THAT THE RESPONDENT HAS HAD
54 AN OPPORTUNITY TO BE HEARD. THE RESPONDENT IS ENTITLED TO A HEARING
55 PROMPTLY AFTER A VIOLATION PETITION HAS BEEN FILED. THE RESPONDENT IS
56 ENTITLED TO COUNSEL AT ALL STAGES OF THE PROCEEDING AND MAY NOT WAIVE

1 REPRESENTATION BY COUNSEL EXCEPT AS PROVIDED IN SECTION TWO HUNDRED
2 FORTY-NINE-A OF THIS ACT.

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

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

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

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

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

17 (IV) AT THE HEARING, THE COURT MAY RECEIVE ANY EVIDENCE THAT IS RELE-
18 VANT, COMPETENT AND MATERIAL. THE RESPONDENT MAY CROSS-EXAMINE
19 WITNESSES AND PRESENT EVIDENCE ON HIS OR HER OWN BEHALF. THE COURT'S
20 DETERMINATION MUST BE BASED UPON COMPETENT EVIDENCE.

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

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