

2602--B

2013-2014 Regular Sessions

I N   A S S E M B L Y

January 16, 2013

---

Introduced by M. of A. PAULIN, CRESPO, JAFFEE, GALEF, GIBSON, MAGEE, MOYA, RIVERA, TITONE, WEPRIN -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Children and Families -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- 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

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

LBD03050-06-3

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

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

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

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

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

54 5. If the court determines THAT there was no violation of probation OR  
55 CONDITIONAL DISCHARGE by the respondent, the period of interruption

1 shall be credited to the period of probation OR CONDITIONAL DISCHARGE,  
2 AS APPLICABLE.

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

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

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

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

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

23 (II) IS VOLUNTARILY WAIVING HIS OR HER RIGHT TO A FACT-FINDING HEAR-  
24 ING; AND

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

26 THE PROVISIONS OF THIS SUBDIVISION SHALL NOT BE WAIVED.

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

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

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

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

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

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

55 (C) A respondent [is] brought before the court for failure to comply  
56 with reasonable terms and conditions of an order of probation issued

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

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

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

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

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

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

52 (E) HEARING ON VIOLATION. (I) THE COURT MAY NOT REVOKE AN ORDER OF  
53 PROBATION OR SUSPENDED JUDGMENT UNLESS THE COURT HAS FOUND BY COMPETENT  
54 PROOF THAT THE RESPONDENT HAS VIOLATED A CONDITION OF SUCH ORDER IN AN  
55 IMPORTANT RESPECT AND WITHOUT JUST CAUSE AND THAT THE RESPONDENT HAS HAD  
56 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 POSSIBLE, THE COURT SHALL APPOINT THE SAME ATTORNEY WHO REPRESENTED THE RESPONDENT IN THE ORIGINAL PROCEEDINGS UNDER THIS ARTICLE; AND

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

(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 EVIDENCE THAT IS RELEVANT, COMPETENT AND MATERIAL. 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.