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

6707

I N S E N A T E

March 3, 2014

Introduced by Sen. DeFRANCISCO -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the family court act, in relation to sanctions for willful failure to comply with court orders for child support

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraph (c) of subdivision 3 of section 454 of the family court act, as amended by chapter 892 of the laws of 1986 and as relettered by chapter 699 of the laws of 1996, is amended and a new paragraph (d) is added to read as follows:

(c) place the respondent on probation [under] PURSUANT TO SECTION FOUR HUNDRED FIFTY-SIX OF THIS PART UPON such conditions as the court may determine and in accordance with the provisions of the criminal procedure law[.]; OR

(D) COMBINE A SENTENCE OR A SUSPENDED SENTENCE OF INCARCERATION PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION WITH A REQUIREMENT THAT THE RESPONDENT PARTICIPATE IN A REHABILITATIVE PROGRAM OR BE PLACED ON PROBATION PURSUANT TO PARAGRAPH (B) OR (C) OF THIS SUBDIVISION, RESPECTIVELY.

S 2. Section 456 of the family court act, subdivision (a) as amended by chapter 809 of the laws of 1963, is amended to read as follows:

S 456. Probation. (a) No person may be placed on probation under this article unless the court makes an order to that effect, either at the time of the making of an order of support or under section four hundred fifty-four OF THIS PART. THE ORDER OF PROBATION MY CONTAIN SUCH CONDITIONS AS THE COURT MAY DETERMINE. The MAXIMUM period of probation may [continue so long as an order of support, order of protection or order of visitation applies to such person] NOT BE GREATER THAN TWO YEARS OR, WHERE THE COURT FINDS THAT AGGRAVATING CIRCUMSTANCES EXIST, A PERIOD NOT GREATER THAN FIVE YEARS. IF THE COURT FINDS, AT THE CONCLUSION OF THE ORIGINAL PERIOD, UPON NOTICE AND AN OPPORTUNITY TO BE HEARD, THAT EXCEPTIONAL CIRCUMSTANCES REQUIRE AN ADDITIONAL YEAR OF PROBATION, THE COURT MAY CONTINUE PROBATION FOR A PERIOD NOT GREATER THAN ONE YEAR. FOR

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

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PURPOSES OF THIS SECTION, "AGGRAVATING CIRCUMSTANCES" SHALL INCLUDE, BUT NOT BE LIMITED TO: (I) A PRIOR WILLFUL VIOLATION OF A CHILD SUPPORT ORDER OR OF A PRIOR ORDER OF PROBATION IN CONJUNCTION WITH A PROCEEDING UNDER THIS ARTICLE; (II) A PRIOR INCIDENT OR INCIDENTS OF THE RESPONDENT CONCEALING HIS OR HER WHEREABOUTS AND BEING PRODUCED INVOLUNTARILY PURSUANT TO THE ISSUANCE OF A WARRANT; OR (III) ACTIONS BY THE RESPONDENT OR A LEVEL OF ARREARAGES SO HIGH THAT A LONGER PERIOD OF SUPERVISION IS NECESSARY TO ENSURE LONG TERM CONTINUING COMPLIANCE WITH THE ORDER OF SUPPORT.

(b) [The] IF THE court [may at any time, where circumstances warrant it, revoke an order of] FINDS, AFTER A HEARING, THAT A PARTY WHO HAS BEEN PLACED ON probation[. Upon such revocation, the probationer shall be brought to court, which may, without further hearing,] IN ACCORDANCE WITH THIS SECTION, HAS WILLFULLY VIOLATED ANY TERM OR CONDITION OF PROBATION, THE COURT, AFTER GIVING NOTICE AND AN OPPORTUNITY TO BE HEARD TO THE PARTIES AND THE ATTORNEY FOR THE CHILD, IF ANY, MAY REVOKE SUCH ORDER OF PROBATION AND MAY make any order [that might have been made at the time the order of probation was made] AUTHORIZED BY SECTION FOUR HUNDRED FIFTY-FOUR OF THIS PART. NO SUCH FINDING MAY BE MADE UNLESS A VERIFIED PETITION SUBSCRIBED TO BY THE PROBATION SERVICE OR THE APPROPRIATE GOVERNMENT AGENCY HAS BEEN FILED AND DULY SERVED UPON THE PARTIES. THE 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 DEPOSITION MUST ESTABLISH, IF TRUE, EVERY VIOLATION CHARGED. THE PERIOD OF PROBATION SHALL BE DEEMED TOLLED AS OF THE DATE OF FILING OF THE PROBATION VIOLATION PETITION, BUT, IN THE EVENT THAT THE COURT DOES NOT FIND THAT THE ORDER OF PROBATION WAS WILLFULLY VIOLATED, THE PERIOD OF SUCH INTERRUPTION SHALL BE CREDITED TO THE PERIOD OF PROBATION.

S 3. This act shall take effect immediately.