

7685

2015-2016 Regular Sessions

I N A S S E M B L Y

May 22, 2015

Introduced by M. of A. O'DONNELL -- read once and referred to the
Committee on Correction

AN ACT to amend the executive law and the criminal procedure law, in
relation to incapacitated parole violators

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

1 Section 1. Subparagraph (i) of paragraph (a) of subdivision 3 of
2 section 259-i of the executive law, as amended by section 38-f-1 of
3 subpart A of part C of chapter 62 of the laws of 2011, is amended to
4 read as follows:
5 (i) If the parole officer having charge of a presumptively released,
6 paroled or conditionally released person or a person released to post-
7 release supervision or a person received under the uniform act for out-
8 of-state parolee supervision shall have reasonable cause to believe that
9 such person has lapsed into criminal ways or company, or has violated
10 one or more conditions of his presumptive release, parole, conditional
11 release or post-release supervision, such parole officer shall report
12 such fact to a member of the board, or to any officer of the department
13 designated by the board, and thereupon a warrant may be issued for the
14 retaking of such person and for his temporary detention in accordance
15 with the rules of the board UNLESS SUCH PERSON HAS BEEN DETERMINED TO BE
16 CURRENTLY UNFIT TO PROCEED TO TRIAL OR IS CURRENTLY SUBJECT TO A TEMPO-
17 RARY OR FINAL ORDER OF OBSERVATION PURSUANT TO ARTICLE SEVEN HUNDRED
18 THIRTY OF THE CRIMINAL PROCEDURE LAW, IN WHICH CASE NO WARRANT SHALL BE
19 ISSUED. The retaking and detention of any such person may be further
20 regulated by rules and regulations of the department not inconsistent
21 with this article. A warrant issued pursuant to this section shall
22 constitute sufficient authority to the superintendent or other person in
23 charge of any jail, penitentiary, lockup or detention pen to whom it is
24 delivered to hold in temporary detention the person named therein;
25 except that a warrant issued with respect to a person who has been

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

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1 released on medical parole pursuant to section two hundred fifty-nine-r
2 of this article and whose parole is being revoked pursuant to paragraph
3 (h) of subdivision four of such section shall constitute authority for
4 the immediate placement of the parolee only into imprisonment in the
5 custody of the department to hold in temporary detention. A warrant
6 issued pursuant to this section shall also constitute sufficient author-
7 ity to the person in charge of a drug treatment campus, as defined in
8 subdivision twenty of section two of the correction law, to hold the
9 person named therein, in accordance with the procedural requirements of
10 this section, for a period of at least ninety days to complete an inten-
11 sive drug treatment program mandated by the board as an alternative to
12 presumptive release or parole or conditional release revocation, or the
13 revocation of post-release supervision, and shall also constitute suffi-
14 cient authority for return of the person named therein to local custody
15 to hold in temporary detention for further revocation proceedings in the
16 event said person does not successfully complete the intensive drug
17 treatment program. The board's rules shall provide for cancellation of
18 delinquency and restoration to supervision upon the successful
19 completion of the program.

20 S 2. Paragraph (f) of subdivision 3 of section 259-i of the executive
21 law is amended by adding a new subparagraph (xii) to read as follows:

22 (XII) IF AT ANY TIME DURING A REVOCATION PROCEEDING THE ALLEGED VIOLA-
23 TOR, HIS OR HER COUNSEL, OR AN EMPLOYEE OF THE DEPARTMENT CONTENTS, OR
24 IF IT REASONABLY APPEARS TO THE HEARING OFFICER, THAT THE ALLEGED VIOLA-
25 TOR IS AN INCAPACITATED PERSON AS THAT TERM IS DEFINED IN SUBDIVISION
26 ONE OF SECTION 730.10 OF THE CRIMINAL PROCEDURE LAW AND NO JUDICIAL
27 DETERMINATION HAS BEEN MADE THAT THE ALLEGED VIOLATOR IS AN INCAPACI-
28 TATED PERSON, THE REVOCATION PROCEEDING SHALL BE TEMPORARILY STAYED
29 UNTIL THE SUPERIOR COURT DETERMINES WHETHER OR NOT THE PERSON IS FIT TO
30 PROCEED. THE MATTER SHALL BE PROMPTLY REFERRED TO THE SUPERIOR COURT FOR
31 DETERMINATION OF THE ALLEGED VIOLATOR'S FITNESS TO PROCEED IN A MANNER
32 CONSISTENT WITH THE PROVISIONS OF ARTICLE SEVEN HUNDRED THIRTY OF THE
33 CRIMINAL PROCEDURE LAW, PROVIDED HOWEVER THAT THE SUPERIOR COURT SHALL
34 IMMEDIATELY APPOINT COUNSEL FOR ANY UNREPRESENTED ALLEGED VIOLATOR
35 ELIGIBLE FOR APPOINTED COUNSEL UNDER SUBPARAGRAPH (V) OF PARAGRAPH (F)
36 OF SUBDIVISION THREE OF SECTION TWO HUNDRED FIFTY-NINE-I OF THIS CHAP-
37 TER. THE COURT SHALL DECIDE WHETHER OR NOT THE ALLEGED VIOLATOR IS INCA-
38 PACITATED WITHIN THIRTY DAYS OF THE REFERRAL FROM THE HEARING OFFICER.
39 IF THE COURT DETERMINES THAT THE ALLEGED VIOLATOR IS NOT AN INCAPACI-
40 TATED PERSON, THE COURT SHALL ORDER THAT THE MATTER BE RETURNED TO THE
41 BOARD OF PAROLE FOR CONTINUATION AND DISPOSITION OF THE REVOCATION
42 PROCEEDING. IF THE COURT DETERMINES THAT THE ALLEGED VIOLATOR IS AN
43 INCAPACITATED PERSON AND IF NO FELONY CHARGES ARE PENDING AGAINST THE
44 ALLEGED VIOLATOR, THE COURT SHALL ISSUE A FINAL ORDER OF OBSERVATION
45 COMMITTING SUCH PERSON TO THE CUSTODY OF THE COMMISSIONER OF MENTAL
46 HEALTH OR THE COMMISSIONER OF DEVELOPMENTAL DISABILITIES FOR CARE AND
47 TREATMENT IN AN APPROPRIATE INSTITUTION IN A MANNER CONSISTENT WITH
48 SUBDIVISION ONE OF SECTION 730.40 OF THE CRIMINAL PROCEDURE LAW. IF A
49 FINAL ORDER OF OBSERVATION HAS BEEN ISSUED PURSUANT TO THIS SECTION, THE
50 HEARING OFFICER SHALL DISMISS THE VIOLATION CHARGES AND SUCH DISMISSAL
51 SHALL ACT AS A BAR TO ANY FURTHER PROCEEDING UNDER THIS SECTION AGAINST
52 THE ALLEGED VIOLATOR FOR SUCH VIOLATIONS. IF FELONY CRIMINAL CHARGES ARE
53 PENDING AT ANY TIME AGAINST AN ALLEGED VIOLATOR WHO HAS BEEN REFERRED TO
54 SUPERIOR COURT FOR A FITNESS EVALUATION BUT BEFORE A DETERMINATION OF
55 FITNESS HAS BEEN MADE PURSUANT TO THIS SECTION, THE COURT SHALL DECIDE
56 WHETHER OR NOT THE ALLEGED VIOLATOR IS INCAPACITATED PURSUANT TO ARTICLE

1 SEVEN HUNDRED THIRTY OF THE CRIMINAL PROCEDURE LAW AND THE REVOCATION
2 PROCEEDING SHALL BE HELD IN ABEYANCE UNTIL SUCH DECISION HAS BEEN
3 REACHED. THE HEARING OFFICER SHALL ADOPT THE CAPACITY FINDING OF THE
4 COURT AND EITHER TERMINATE THE REVOCATION PROCESS IF AN ORDER OF OBSER-
5 VATION HAS BEEN MADE BY THE COURT OR PROCEED WITH THE REVOCATION HEARING
6 IF THE ALLEGED VIOLATOR HAS BEEN FOUND NOT TO BE AN INCAPACITATED
7 PERSON.

8 S 3. Subdivision 2 of section 730.10 of the criminal procedure law, as
9 amended by chapter 566 of the laws of 1994, is amended to read as
10 follows:

11 2. "Order of examination" means an order issued to an appropriate
12 director by a criminal court wherein a criminal action is pending
13 against a defendant[,] or BY A COURT EVALUATING THE CAPACITY OF AN
14 ALLEGED VIOLATOR IN A PAROLE REVOCATION PROCEEDING PURSUANT TO SUBPARA-
15 GRAPH (XII) OF PARAGRAPH (F) OF SUBDIVISION THREE OF SECTION TWO HUNDRED
16 FIFTY-NINE-I OF THE EXECUTIVE LAW, OR by a family court pursuant to
17 section 322.1 of the family court act wherein a juvenile delinquency
18 proceeding is pending against a juvenile, directing that such person be
19 examined for the purpose of determining if he is an incapacitated
20 person.

21 S 4. Subparagraph (v) of paragraph (f) of subdivision 3 of section
22 259-i of the executive law, as amended by section 11 of part E of chap-
23 ter 62 of the laws of 2003, is amended to read as follows:

24 (v) The alleged violator shall be permitted representation by counsel
25 at the revocation hearing. In any case, INCLUDING WHEN A SUPERIOR COURT
26 IS CALLED UPON TO EVALUATE THE CAPACITY OF AN ALLEGED VIOLATOR IN A
27 PAROLE REVOCATION PROCEEDING, where such person is financially unable to
28 retain counsel, the criminal court of the city of New York, the county
29 court or district court in the county where the violation is alleged to
30 have occurred or where the hearing is held, shall assign counsel in
31 accordance with the county or city plan for representation placed in
32 operation pursuant to article eighteen-B of the county law. He OR SHE
33 shall have the right to confront and cross-examine adverse witnesses,
34 unless there is good cause for their non-attendance as determined by the
35 presiding officer; present witnesses and documentary evidence in defense
36 of the charges; and present witnesses and documentary evidence relevant
37 to the question whether reincarceration of the alleged violator is
38 appropriate.

39 S 5. This act shall take effect on the one hundred eightieth day after
40 it shall have become a law.