

4780

2015-2016 Regular Sessions

I N   S E N A T E

April 15, 2015

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Introduced by Sen. GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

AN ACT to amend the executive law and the criminal procedure law, in relation to revocation proceedings

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

1     Section 1. Subparagraph (i) of paragraph (c) of subdivision 3 of  
2     section 259-i of the executive law, as amended by section 11 of part E  
3     of chapter 62 of the laws of 2003, is amended to read as follows:  
4     (i) Within fifteen days after the warrant for retaking and temporary  
5     detention has been executed, unless the releasee has been convicted of a  
6     new crime committed while under presumptive release, parole, conditional  
7     release or post-release supervision, the board of parole shall afford  
8     the alleged presumptive release, parole, conditional release or post-re-  
9     lease supervision violator a preliminary revocation hearing before a  
10    hearing officer designated by the board of parole. Such hearing officer  
11    shall not have had any prior supervisory involvement over the alleged  
12    violator. IF THE ALLEGED VIOLATOR CONTENTS OR IF IT REASONABLY APPEARS,  
13    THAT HE OR SHE IS AN INCAPACITATED PERSON, AS THAT TERM IS DEFINED IN  
14    SUBDIVISION ONE OF SECTION 730.10 OF THE CRIMINAL PROCEDURE LAW, AND NO  
15    JUDICIAL DETERMINATION HAS PREVIOUSLY BEEN MADE THAT THE ALLEGED VIOLA-  
16    TOR IS AN INCAPACITATED PERSON, THE REVOCATION PROCEEDING SHALL BE  
17    STAYED AND THE MATTER SHALL BE REFERRED TO A COURT OF COMPETENT JURIS-  
18    DICTION FOR DETERMINATION OF THE ALLEGED VIOLATOR'S FITNESS TO PROCEED  
19    IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE SEVEN HUNDRED THIRTY OF THE  
20    CRIMINAL PROCEDURE LAW. IF THE COURT DETERMINES THAT THE ALLEGED VIOLA-  
21    TOR IS NOT AN INCAPACITATED PERSON, THE COURT SHALL ORDER THAT THE  
22    MATTER BE RETURNED TO THE BOARD OF PAROLE FOR CONTINUATION AND DISPOSI-  
23    TION OF THE REVOCATION PROCEEDING. IF THE COURT DETERMINES THAT THE  
24    ALLEGED VIOLATOR IS AN INCAPACITATED PERSON, THE COURT SHALL PROCEED IN

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

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1 ACCORDANCE WITH THE PROVISIONS OF ARTICLE SEVEN HUNDRED THIRTY OF THE  
2 CRIMINAL PROCEDURE LAW.

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

6 2. "Order of examination" means an order issued to an appropriate  
7 director by a criminal court wherein a criminal action is pending  
8 against a defendant[, ] or AGAINST AN ALLEGED VIOLATOR IN A PAROLE REVO-  
9 CATION PROCEEDING AGAINST AN ALLEGED VIOLATOR, OR by a family court  
10 pursuant to section 322.1 of the family court act wherein a juvenile  
11 delinquency proceeding is pending against a juvenile, directing that  
12 such person be examined for the purpose of determining if he is an inca-  
13 pacitated person.

14 S 3. This act shall take effect on the one hundred eightieth day after  
15 it shall have become a law.