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

4780--A

Cal. No. 424

2015-2016 Regular Sessions

I N S E N A T E

April 15, 2015

Introduced by Sen. GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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:

Section 1. Subparagraph (i) of paragraph (a) of subdivision 3 of section 259-i of the executive law, as amended by section 38-f-l of subpart A of part C of chapter 62 of the laws of 2011, is amended to read as follows:

(i) If the parole officer having charge of a presumptively released, paroled or conditionally released person or a person released to post-release supervision or a person received under the uniform act for out-of-state parolee supervision shall have reasonable cause to believe that such person has lapsed into criminal ways or company, or has violated one or more conditions of his presumptive release, parole, conditional release or post-release supervision, such parole officer shall report such fact to a member of the board, or to any officer of the department designated by the board, and thereupon a warrant may be issued for the retaking of such person and for his temporary detention in accordance with the rules of the board UNLESS SUCH PERSON HAS BEEN DETERMINED TO BE CURRENTLY UNFIT TO PROCEED TO TRIAL OR IS CURRENTLY SUBJECT TO A TEMPORARY OR FINAL ORDER OF OBSERVATION PURSUANT TO ARTICLE SEVEN HUNDRED THIRTY OF THE CRIMINAL PROCEDURE LAW, IN WHICH CASE NO WARRANT SHALL BE ISSUED. The retaking and detention of any such person may be further regulated by rules and regulations of the department not inconsistent with this article. A warrant issued pursuant to this section shall constitute sufficient authority to the superintendent or other person in

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

LBD10451-03-5

charge of any jail, penitentiary, lockup or detention pen to whom it is delivered to hold in temporary detention the person named therein; except that a warrant issued with respect to a person who has been released on medical parole pursuant to section two hundred fifty-nine-r of this article and whose parole is being revoked pursuant to paragraph (h) of subdivision four of such section shall constitute authority for the immediate placement of the parolee only into imprisonment in the custody of the department to hold in temporary detention. A warrant issued pursuant to this section shall also constitute sufficient authority to the person in charge of a drug treatment campus, as defined in subdivision twenty of section two of the correction law, to hold the person named therein, in accordance with the procedural requirements of this section, for a period of at least ninety days to complete an intensive drug treatment program mandated by the board as an alternative to presumptive release or parole or conditional release revocation, or the revocation of post-release supervision, and shall also constitute sufficient authority for return of the person named therein to local custody to hold in temporary detention for further revocation proceedings in the event said person does not successfully complete the intensive drug treatment program. The board's rules shall provide for cancellation of delinquency and restoration to supervision upon the successful completion of the program.

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

(XII) IF AT ANY TIME DURING A REVOCATION PROCEEDING THE ALLEGED VIOLATOR, HIS OR HER COUNSEL, OR AN EMPLOYEE OF THE DEPARTMENT CONTENDS, OR IF IT REASONABLY APPEARS TO THE HEARING OFFICER, THAT THE ALLEGED VIOLATOR IS AN INCAPACITATED PERSON AS THAT TERM IS DEFINED IN SUBDIVISION ONE OF SECTION 730.10 OF THE CRIMINAL PROCEDURE LAW AND NO JUDICIAL DETERMINATION HAS BEEN MADE THAT THE ALLEGED VIOLATOR IS AN INCAPACITATED PERSON, THE REVOCATION PROCEEDING SHALL BE TEMPORARILY STAYED UNTIL THE SUPERIOR COURT DETERMINES WHETHER OR NOT THE PERSON IS FIT TO PROCEED. THE MATTER SHALL BE PROMPTLY REFERRED TO THE SUPERIOR COURT FOR DETERMINATION OF THE ALLEGED VIOLATOR'S FITNESS TO PROCEED IN A MANNER CONSISTENT WITH THE PROVISIONS OF ARTICLE SEVEN HUNDRED THIRTY OF THE CRIMINAL PROCEDURE LAW, PROVIDED HOWEVER THAT THE SUPERIOR COURT SHALL IMMEDIATELY APPOINT COUNSEL FOR ANY UNREPRESENTED ALLEGED VIOLATOR ELIGIBLE FOR APPOINTED COUNSEL UNDER SUBPARAGRAPH (V) OF PARAGRAPH (F) OF SUBDIVISION THREE OF SECTION TWO HUNDRED FIFTY-NINE-I OF THIS CHAPTER. THE COURT SHALL DECIDE WHETHER OR NOT THE ALLEGED VIOLATOR IS INCAPACITATED WITHIN THIRTY DAYS OF THE REFERRAL FROM THE HEARING OFFICER. IF THE COURT DETERMINES THAT THE ALLEGED VIOLATOR IS NOT AN INCAPACITATED PERSON, THE COURT SHALL ORDER THAT THE MATTER BE RETURNED TO THE BOARD OF PAROLE FOR CONTINUATION AND DISPOSITION OF THE REVOCATION PROCEEDING. IF THE COURT DETERMINES THAT THE ALLEGED VIOLATOR IS AN INCAPACITATED PERSON AND IF NO FELONY CHARGES ARE PENDING AGAINST THE ALLEGED VIOLATOR, THE COURT SHALL ISSUE A FINAL ORDER OF OBSERVATION COMMITTING SUCH PERSON TO THE CUSTODY OF THE COMMISSIONER OF MENTAL HEALTH OR THE COMMISSIONER OF DEVELOPMENTAL DISABILITIES FOR CARE AND TREATMENT IN AN APPROPRIATE INSTITUTION IN A MANNER CONSISTENT WITH SUBDIVISION ONE OF SECTION 730.40 OF THE CRIMINAL PROCEDURE LAW. IF A FINAL ORDER OF OBSERVATION HAS BEEN ISSUED PURSUANT TO THIS SECTION, THE HEARING OFFICER SHALL DISMISS THE VIOLATION CHARGES AND SUCH DISMISSAL SHALL ACT AS A BAR TO ANY FURTHER PROCEEDING UNDER THIS SECTION AGAINST THE ALLEGED VIOLATOR FOR SUCH VIOLATIONS. IF FELONY CRIMINAL CHARGES ARE PENDING AT ANY TIME AGAINST AN ALLEGED VIOLATOR WHO HAS BEEN REFERRED TO

SUPERIOR COURT FOR A FITNESS EVALUATION BUT BEFORE A DETERMINATION OF FITNESS HAS BEEN MADE PURSUANT TO THIS SECTION, THE COURT SHALL DECIDE WHETHER OR NOT THE ALLEGED VIOLATOR IS INCAPACITATED PURSUANT TO ARTICLE SEVEN HUNDRED THIRTY OF THE CRIMINAL PROCEDURE LAW AND THE REVOCATION PROCEEDING SHALL BE HELD IN ABEYANCE UNTIL SUCH DECISION HAS BEEN REACHED. THE HEARING OFFICER SHALL ADOPT THE CAPACITY FINDING OF THE COURT AND EITHER TERMINATE THE REVOCATION PROCESS IF AN ORDER OF OBSERVATION HAS BEEN MADE BY THE COURT OR PROCEED WITH THE REVOCATION HEARING IF THE ALLEGED VIOLATOR HAS BEEN FOUND NOT TO BE AN INCAPACITATED PERSON.

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

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

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

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

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