

5897

2015-2016 Regular Sessions

I N A S S E M B L Y

March 6, 2015

Introduced by M. of A. PAULIN, LUPARDO, CRESPO, JAFFEE, GALEF, MAGEE, MOYA, RIVERA, TITONE, WEPRIN -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Children and Families

AN ACT to amend the family court act, in relation to adjudication 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. Subdivisions 4 and 5 of section 360.2 of the family court
2 act, as added by chapter 920 of the laws of 1982, are amended to read as
3 follows:
4 4. If a petition is filed under subdivision one, the period of
5 probation as prescribed by section 353.2 OR CONDITIONAL DISCHARGE AS
6 PRESCRIBED BY SECTION 353.1 shall be interrupted as of the date of the
7 filing of the petition. Such interruption shall continue until a final
8 determination as to the petition has been made by the court pursuant to
9 a hearing held in accordance with section 360.3 or until such time as
10 the respondent reaches the maximum age of acceptance into [a division
11 for youth] AN OFFICE OF CHILDREN AND FAMILY SERVICES facility.
12 5. If the court determines THAT there was no violation of probation OR
13 CONDITIONAL DISCHARGE by the respondent, the period of interruption
14 shall be credited to the period of probation OR CONDITIONAL DISCHARGE,
15 AS APPLICABLE.
16 S 2. Subdivision (h) of section 735 of the family court act, as added
17 by section 7 of part E of chapter 57 of the laws of 2005, is amended to
18 read as follows:
19 (h) No statement made to the designated lead agency or to any agency
20 or organization to which the potential respondent HAS BEEN REFERRED,
21 prior to the filing of the petition, or if the petition has been filed,
22 prior to the time the respondent has been notified that attempts at

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

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diversion will not be made or have been terminated, or prior to the commencement of a fact-finding hearing if attempts at diversion have not terminated previously, may be admitted into evidence at a fact-finding hearing or, if the proceeding is transferred to a criminal court, at any time prior to a conviction.

S 3. The family court act is amended by adding a new section 743 to read as follows:

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

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

(II) IS VOLUNTARILY WAIVING HIS OR HER RIGHT TO A FACT-FINDING HEARING; AND

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

THE PROVISIONS OF THIS SUBDIVISION SHALL NOT BE WAIVED.

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

S 4. Section 776 of the family court act is amended to read as follows:

S 776. Failure to comply with terms and conditions of suspended judgment. [If a] A respondent [is] brought before the court for failure to comply with reasonable terms and conditions of [a] AN ORDER OF suspended judgment [issued under this article and if,] SHALL BE SUBJECT TO SECTION SEVEN HUNDRED SEVENTY-NINE-A OF THIS PART. IF, after hearing, the court [is satisfied] DETERMINES by competent proof that the respondent WITHOUT JUST CAUSE failed to comply with such terms and conditions, 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 the [suspension] ORDER of SUSPENDED judgment and proceed to make any order that might have been made at the time judgment was suspended.

S 5. Section 779 of the family court act is amended to read as follows:

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

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

(C) A respondent [is] brought before the court for failure to comply with reasonable terms and conditions of an order of probation issued under SECTION SEVEN HUNDRED FIFTY-SEVEN OF this article [and if,] SHALL BE SUBJECT TO SECTION SEVEN HUNDRED SEVENTY-NINE-A OF THIS ARTICLE. IF, after A hearing PURSUANT TO SUCH SECTION, the court [is satisfied] DETERMINES by competent proof that the respondent without just cause failed to comply with such terms and conditions, 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 the order of probation and proceed to make any order

1 that might have been made at the time the order of probation was
2 entered.

3 S 6. Section 779-a of the family court act, as amended by chapter 309
4 of the laws of 1996, is amended to read as follows:

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

16 (B) THE PETITION MUST BE VERIFIED AND SUBSCRIBED BY THE PETITIONER,
17 PROBATION SERVICE OR THE APPROPRIATE PRESENTMENT AGENCY. THE PETITION
18 MUST SPECIFY THE CONDITION OR CONDITIONS OF THE ORDER VIOLATED AND A
19 REASONABLE DESCRIPTION OF THE DATE, TIME, PLACE AND SPECIFIC MANNER IN
20 WHICH THE VIOLATION OCCURRED. NON-HEARSAY ALLEGATIONS OF THE FACTUAL
21 PART OF THE PETITION OR OF ANY SUPPORTING DEPOSITIONS MUST ESTABLISH, IF
22 TRUE, EVERY VIOLATION CHARGED.

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

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

44 (E) HEARING ON VIOLATION. (I) THE COURT MAY NOT REVOKE AN ORDER OF
45 PROBATION OR SUSPENDED JUDGMENT UNLESS THE COURT HAS FOUND BY COMPETENT
46 PROOF THAT THE RESPONDENT HAS VIOLATED A CONDITION OF SUCH ORDER IN AN
47 IMPORTANT RESPECT AND WITHOUT JUST CAUSE AND THAT THE RESPONDENT HAS HAD
48 AN OPPORTUNITY TO BE HEARD. THE RESPONDENT IS ENTITLED TO A HEARING
49 PROMPTLY AFTER A VIOLATION PETITION HAS BEEN FILED. THE RESPONDENT IS
50 ENTITLED TO COUNSEL AT ALL STAGES OF THE PROCEEDING AND MAY NOT WAIVE
51 REPRESENTATION BY COUNSEL EXCEPT AS PROVIDED IN SECTION TWO HUNDRED
52 FORTY-NINE-A OF THIS ACT.

53 (II) AT THE TIME OF THE RESPONDENT'S FIRST APPEARANCE FOLLOWING THE
54 FILING OF A VIOLATION PETITION, THE COURT MUST:

55 (A) ADVISE THE RESPONDENT OF THE CONTENTS OF THE PETITION AND FURNISH
56 A COPY TO THE RESPONDENT;

1 (B) ADVISE THE RESPONDENT THAT HE OR SHE IS ENTITLED TO COUNSEL AT ALL
2 STAGES OF A PROCEEDING UNDER THIS SECTION AND APPOINT AN ATTORNEY PURSU-
3 ANT TO SECTION TWO HUNDRED FORTY-NINE OF THIS ACT IF INDEPENDENT LEGAL
4 REPRESENTATION IS NOT AVAILABLE TO THE RESPONDENT. IF PRACTICABLE, THE
5 COURT SHALL APPOINT THE SAME ATTORNEY WHO REPRESENTED THE RESPONDENT IN
6 THE ORIGINAL PROCEEDINGS UNDER THIS ARTICLE; AND

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

9 (III) UPON REQUEST, THE COURT SHALL GRANT A REASONABLE ADJOURNMENT TO
10 THE RESPONDENT TO PREPARE FOR THE HEARING.

11 (IV) AT THE HEARING, THE COURT MAY RECEIVE ANY EVIDENCE THAT IS RELE-
12 VANT, COMPETENT AND MATERIAL. THE RESPONDENT MAY CROSS-EXAMINE WITNESSES
13 AND PRESENT EVIDENCE ON HIS OR HER OWN BEHALF. THE COURT'S DETERMINATION
14 MUST BE BASED UPON COMPETENT EVIDENCE.

15 (V) AT THE CONCLUSION OF THE HEARING, THE COURT MAY ADJOURN THE MATTER
16 FOR A NEW DISPOSITIONAL HEARING IN ACCORDANCE WITH SUBDIVISION (B) OR
17 (C) OF SECTION SEVEN HUNDRED FORTY-NINE OF THIS ARTICLE. THE COURT MAY
18 REVOKE, CONTINUE OR MODIFY THE ORDER OF PROBATION OR SUSPENDED JUDGMENT.
19 IF THE COURT REVOKES THE ORDER, IT SHALL ORDER A DIFFERENT DISPOSITION
20 PURSUANT TO SUBDIVISION ONE OF SECTION SEVEN HUNDRED FIFTY-FOUR OF THIS
21 ARTICLE AND SHALL MAKE FINDINGS IN ACCORDANCE WITH SUBDIVISION TWO OF
22 SUCH SECTION. IF THE COURT CONTINUES THE ORDER OF PROBATION OR
23 SUSPENDED JUDGMENT, IT SHALL DISMISS THE PETITION OF VIOLATION.

24 S 7. This act shall take effect on the ninetieth day after it shall
25 have become a law and shall apply to petitions for violations of
26 probation, conditional discharge and suspended judgment filed on or
27 after such effective date.