

4780--A

Cal. No. 424

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 -- 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:

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

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

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

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

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

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

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

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

24 S 4. Subparagraph (v) of paragraph (f) of subdivision 3 of section  
25 259-i of the executive law, as amended by section 11 of part E of chap-  
26 ter 62 of the laws of 2003, is amended to read as follows:

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

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