

5286

2015-2016 Regular Sessions

I N S E N A T E

May 12, 2015

Introduced by Sen. GALLIVAN -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed 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  
23 diversion will not be made or have been terminated, or prior to the

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

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

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

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

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

13 (II) IS VOLUNTARILY WAIVING HIS OR HER RIGHT TO A FACT-FINDING HEAR-  
14 ING; AND

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

16 THE PROVISIONS OF THIS SUBDIVISION SHALL NOT BE WAIVED.

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

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

23 S 776. Failure to comply with terms and conditions of suspended judg-  
24 ment. [If a] A respondent [is] brought before the court for failure to  
25 comply with reasonable terms and conditions of [a] AN ORDER OF suspended  
26 judgment [issued under this article and if,] SHALL BE SUBJECT TO SECTION  
27 SEVEN HUNDRED SEVENTY-NINE-A OF THIS PART. IF, after hearing, the court  
28 [is satisfied] DETERMINES by competent proof that the respondent WITHOUT  
29 JUST CAUSE failed to comply with such terms and conditions, the court  
30 may ADJOURN THE MATTER FOR A NEW DISPOSITIONAL HEARING IN ACCORDANCE  
31 WITH SUBDIVISION (B) OR (C) OF SECTION SEVEN HUNDRED FORTY-NINE OF THIS  
32 ARTICLE. THE COURT MAY revoke the [suspension] ORDER of SUSPENDED judg-  
33 ment and proceed to make any order that might have been made at the time  
34 judgment was suspended.

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

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

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

45 (C) A respondent [is] brought before the court for failure to comply  
46 with reasonable terms and conditions of an order of probation issued  
47 under SECTION SEVEN HUNDRED FIFTY-SEVEN OF this article [and if,] SHALL  
48 BE SUBJECT TO SECTION SEVEN HUNDRED SEVENTY-NINE-A OF THIS ARTICLE. IF,  
49 after A hearing PURSUANT TO SUCH SECTION, the court [is satisfied]  
50 DETERMINES by competent proof that the respondent without just cause  
51 failed to comply with such terms and conditions, the court may ADJOURN  
52 THE MATTER FOR A NEW DISPOSITIONAL HEARING IN ACCORDANCE WITH SUBDIVI-  
53 SION (B) OR (C) OF SECTION SEVEN HUNDRED FORTY-NINE OF THIS ARTICLE. THE  
54 COURT MAY revoke the order of probation and proceed to make any order  
55 that might have been made at the time the order of probation was  
56 entered.

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

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

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

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

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

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

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

53 (A) ADVISE THE RESPONDENT OF THE CONTENTS OF THE PETITION AND FURNISH  
54 A COPY TO THE RESPONDENT;

55 (B) ADVISE THE RESPONDENT THAT HE OR SHE IS ENTITLED TO COUNSEL AT ALL  
56 STAGES OF A PROCEEDING UNDER THIS SECTION AND APPOINT AN ATTORNEY PURSU-

1 ANT TO SECTION TWO HUNDRED FORTY-NINE OF THIS ACT IF INDEPENDENT LEGAL  
2 REPRESENTATION IS NOT AVAILABLE TO THE RESPONDENT. IF PRACTICABLE, THE  
3 COURT SHALL APPOINT THE SAME ATTORNEY WHO REPRESENTED THE RESPONDENT IN  
4 THE ORIGINAL PROCEEDINGS UNDER THIS ARTICLE; AND

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

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

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

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

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