

STATE OF NEW YORK

7885

IN SENATE

March 6, 2018

Introduced by Sen. AVELLA -- (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 and the criminal procedure law, in relation to juvenile delinquency charges of violations in the family court

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 3 of section 304.1 of the family court act, as
2 amended by section 59 of part WWW of chapter 59 of the laws of 2017, is
3 amended to read as follows:

4 3. The detention of a child under ten years of age in a secure
5 detention facility shall not be directed, nor shall the detention of a
6 child adjudicated solely for an act that would constitute a violation as
7 defined in subdivision three of section 10.00 of the penal law be
8 directed, under any of the provisions of this article.

9 § 2. Subdivision 1 of section 350.1 of the family court act, as
10 amended by chapter 398 of the laws of 1983, is amended to read as
11 follows:

12 1. If the respondent is detained and has not been found to have
13 committed a designated felony act the dispositional hearing shall
14 commence not more than ten days after the entry of an order pursuant to
15 subdivision one of section 345.1, except as provided in subdivision
16 three of this section; provided, however, that if the respondent has
17 solely been found to have committed a violation as defined in subdivi-
18 sion three of section 10.00 of the penal law, the respondent shall not
19 be detained pending disposition.

20 § 3. Subdivision 4 of section 352.2 of the family court act, as added
21 by section 56-b of part WWW of chapter 59 of the laws of 2017, is
22 amended to read as follows:

23 4. Where a youth receives a juvenile delinquency adjudication for
24 conduct committed when the youth was age sixteen or older that would
25 constitute a violation as defined in subdivision three of section 10.00
26 of the penal law, the court shall have the power to enter an order of

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

LBD14579-01-8

1 disposition in accordance with [~~paragraphs~~] paragraph (a) [~~and (b)~~] of
2 subdivision one of this section. The court shall not order detention or
3 placement of a youth solely adjudicated under this subdivision.

4 § 4. Subdivision 6 of section 360.3 of the family court act, as added
5 by chapter 920 of the laws of 1982, is amended to read as follows:

6 6. At the conclusion of the hearing the court may revoke, continue or
7 modify the order of probation or conditional discharge. If the court
8 revokes the order, it shall order a different disposition pursuant to
9 section 352.2 of this article, provided, however, that if the court
10 finds a violation of an order of conditional discharge where the under-
11 lying finding had been for an act solely constituting a violation as
12 defined in subdivision three of section 10.00 of the penal law, the
13 court may modify the conditions of the conditional discharge but may not
14 order any other disposition under section 352.2 of this article. If the
15 court continues the order of probation or conditional discharge, it
16 shall dismiss the petition of violation.

17 § 5. Subdivision 1 of section 510.15 of the criminal procedure law, as
18 amended by section 36 of part WWW of chapter 59 of the laws of 2017, is
19 amended to read as follows:

20 1. When a principal who is under the age of sixteen is committed to
21 the custody of the sheriff the court must direct that the principal be
22 taken to and lodged in a place certified by the office of children and
23 family services as a juvenile detention facility for the reception of
24 children. When a principal who (a) commencing October first, two thou-
25 sand eighteen, is sixteen years of age; or (b) commencing October first,
26 two thousand nineteen, is sixteen or seventeen years of age, is commit-
27 ted to the custody of the sheriff, the court must direct that the prin-
28 cipal be taken to and lodged in a place certified by the office of chil-
29 dren and family services in conjunction with the state commission of
30 correction as a specialized secure juvenile detention facility for older
31 youth. Where such a direction is made the sheriff shall deliver the
32 principal in accordance therewith and such person shall although lodged
33 and cared for in a juvenile detention facility continue to be deemed to
34 be in the custody of the sheriff. No principal under the age specified
35 to whom the provisions of this section may apply shall be detained in
36 any prison, jail, lockup, or other place used for adults convicted of a
37 crime or under arrest and charged with the commission of a crime without
38 the approval of the office of children and family services which shall
39 consult with the commission of correction if the principal is sixteen
40 years of age or older in the case of each principal and the statement of
41 its reasons therefor; nor shall a principal under the age specified who
42 is charged solely with a violation as defined in subdivision three of
43 section 10.00 of the penal law be subject to detention. The sheriff
44 shall not be liable for any acts done to or by such principal resulting
45 from negligence in the detention of and care for such principal, when
46 the principal is not in the actual custody of the sheriff.

47 § 6. This act shall take effect on the same date and in the same
48 manner as sections thirty-six, fifty-six-b and fifty-nine of part WWW of
49 chapter 59 of the laws of 2017, take effect; provided, however that
50 sections two and four of this act shall take effect on the same date as
51 sections 36, 56-b and 59 of part WWW of chapter 59 of the laws of 2017,
52 take effect.