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:

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

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

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

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

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

4. Where a youth receives a juvenile delinquency adjudication for conduct committed when the youth was age sixteen or older that would constitute a violation **as defined in subdivision three of section 10.00 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.

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

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

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

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

1. When a principal who is under the age of sixteen is committed to the custody of the sheriff the court must direct that the principal be taken to and lodged in a place certified by the office of children and family services as a juvenile detention facility for the reception of children. When a principal who (a) commencing October first, two thousand eighteen, is sixteen years of age; or (b) commencing October first, two thousand nineteen, is sixteen or seventeen years of age, is committed to the custody of the sheriff, the court must direct that the principal be taken to and lodged in a place certified by the office of children and family services in conjunction with the state commission of correction as a specialized secure juvenile detention facility for older youth. Where such a direction is made the sheriff shall deliver the principal in accordance therewith and such person shall although lodged and cared for in a juvenile detention facility continue to be deemed to be in the custody of the sheriff. No principal under the age specified to whom the provisions of this section may apply shall be detained in any prison, jail, lockup, or other place used for adults convicted of a crime or under arrest and charged with the commission of a crime without the approval of the office of children and family services which shall consult with the commission of correction if the principal is sixteen years of age or older in the case of each principal and the statement of its reasons therefor**; nor shall a principal under the age specified who is charged solely with a violation as defined in subdivision three of section 10.00 of the penal law be subject to detention**. The sheriff shall not be liable for any acts done to or by such principal resulting from negligence in the detention of and care for such principal, when the principal is not in the actual custody of the sheriff.

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