STATE OF NEW YORK

5516--B

Cal. No. 766

2019-2020 Regular Sessions

IN SENATE

May 3, 2019

Introduced by Sen. MONTGOMERY -- (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 -- reported favorably from said committee, ordered to first and second report, amended on second report, ordered to a third reading, and to be reprinted as amended, retaining its place in the order of third reading -- amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the family court act and the mental hygiene law, in relation to the determination of capacity to stand trial in juvenile delinquency proceedings in family court

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

Section 1. Subdivision 1 of section 322.1 of the family court act, as amended by chapter 566 of the laws of 1994, is amended to read as follows:

1. At any proceeding under this article, the court must issue an order that the respondent be examined as provided herein when it is of the opinion that the respondent may be an incapacitated person. Notwithstanding the provisions of this or any other law, the court may direct that the examination be conducted on an outpatient basis [~~when~~]**. If** the respondent is [~~not~~] in custody at the time the court issues an order of examination**, the examination may be conducted at the place where the respondent is being held in custody so long as no reasonable alternative outpatient setting is available**. The court shall order that two qualified psychiatric examiners as defined in subdivision seven of section 730.10 of the criminal procedure law examine the respondent to determine if he [~~is mentally ill, mentally retarded or developmentally disabled~~] **or she may be diagnosed as a person with mental illness or an intellectual or developmental disability**.

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

LBD09846-04-9

§ 2. Subdivision 4, paragraphs (a), (c) and (d) of subdivision 5 and subdivisions 6 and 7 of section 322.2 of the family court act, subdivisions 4, 6 and 7 and paragraph (c) of subdivision 5 as added by chapter 920 of the laws of 1982, paragraph (a) of subdivision 5 as amended by section 69 of part WWW of chapter 59 of the laws of 2017, and paragraph (d) of subdivision 5 as amended by chapter 41 of the laws of 2010, are amended to read as follows:

4. If the court finds that there is probable cause to believe that the respondent committed a misdemeanor, the respondent shall be committed to the custody of the appropriate commissioner for a reasonable period not to exceed ninety days. **Unless the court specifies that such commitment shall be in a residential facility, such commissioner having custody may arrange for treatment in an appropriate facility or program, including an outpatient program, in accordance with subdivision (e) of section 7.09 or subdivision (c-1) of section 13.09 respectively, of the mental hygiene law.** The court shall dismiss the petition on the issuance of the order of commitment **and such dismissal shall constitute a bar to further prosecution of the charge or charges contained in the petition**.

(a) If the court finds that there is probable cause to believe that the respondent committed a felony, it shall order the respondent committed to the custody of the commissioner of mental health or the commissioner of the office for people with developmental disabilities for an initial period not to exceed one year from the date of such order. **Unless the court specifies that such commitment shall be in a residential facility, such commissioner having custody may arrange for treatment in an appropriate facility or program, including an outpatient program, in accordance with subdivision (e) of section 7.09 or subdivision (c-1) of section 13.09 respectively, of the mental hygiene law.** Such period may be extended annually upon further application to the court by the commissioner having custody or his or her designee. Such application must be made not more than sixty days prior to the expiration of such period on forms that have been prescribed by the chief administrator of the courts. At that time, the commissioner must give written notice of the application to the respondent, the counsel representing the respondent and the mental hygiene legal service if the respondent is at a residential facility. Upon receipt of such application, the court must conduct a hearing to determine the issue of capacity. If, at the conclusion of a hearing conducted pursuant to this subdivision, the court finds that the respondent is no longer incapacitated, he or she shall be returned to the family court for further proceedings pursuant to this article. If the court is satisfied that the respondent continues to be incapacitated, the court shall authorize continued custody of the respondent by the commissioner **in a facility or program** for a period not to exceed one year. Such extensions shall not continue beyond a reasonable period of time necessary to determine whether the respondent will attain the capacity to proceed to a fact finding hearing in the foreseeable future but in no event shall continue beyond the respondent's eighteenth birthday or, if the respondent was at least sixteen years of age when the act was committed, beyond the respondent's twenty-first birthday.

(c) If the court finds that there is probable cause to believe that the respondent has committed a designated felony act, the court shall require that treatment be provided in a residential facility within the appropriate office of the department of mental hygiene **or in an outpatient facility if the commissioner having custody of the child petitions**

the court pursuant to subdivision seven of this section and such court approves.

(d) The commissioner shall review the condition of the respondent within forty-five days after the respondent is committed to the custody of the commissioner. He or she shall make a second review within ninety days after the respondent is committed to his or her custody. Thereafter, he or she shall review the condition of the respondent every ninety days. The respondent and the counsel for the respondent, shall be notified of any such review and afforded an opportunity to be heard. The commissioner having custody shall apply to the court for an order dismissing the petition whenever he or she determines that there is a substantial probability that the respondent will continue to be incapacitated for the foreseeable future. At the time of such application the commissioner must give written notice of the application to the respondent, the presentment agency and the mental hygiene legal service if the respondent is at a residential facility. Upon receipt of such application, the court may on its own motion conduct a hearing to determine whether there is substantial probability that the respondent will continue to be incapacitated for the foreseeable future, and it must conduct such hearing if a demand therefor is made by the respondent or the mental hygiene legal service within ten days from the date that notice of the application was given to them. The respondent may apply to the court for an order of dismissal on the same ground.

6. Any order pursuant to this section dismissing a petition shall not preclude an application for voluntary or involuntary care and treatment in a facility **or program** of the appropriate office of the department of mental hygiene pursuant to the provisions of the mental hygiene law. Unless the respondent is admitted pursuant to such an application he **or she** shall be released.

7. If the commissioner having custody of a child committed to a residential facility **pursuant to subdivision four or paragraph (a) of subdivision five of this section** determines at any time that such child may be more appropriately treated in a non-residential facility **or on an outpatient basis**, he **or she may arrange for such treatment. If the commissioner having custody of a child committed to a residential facility pursuant to paragraph (c) of subdivision five of this section determines at any time that such child may be more appropriately treated in a non-residential facility or on an outpatient basis, he or she** may petition the family court for a hearing. If the court finds after a hearing that treatment in a non-residential facility **or on an outpatient basis** would be more appropriate for such child, the court shall modify its order of commitment to [~~authorize~~] **direct the commissioner to** transfer [~~of such~~] **the** child to a non-residential facility **or arrange outpatient treatment**. Application for [~~such~~] a hearing **to determine whether any child committed to a residential facility under subdivisions four or five of this section may be more appropriately treated in a non-residential facility or on an outpatient basis** may be made by the respondent.

§ 3. Subdivision (e) of section 7.09 of the mental hygiene law, as amended by chapter 920 of the laws of 1982 and as relettered by chapter 509 of the laws of 1988, is amended to read as follows:

(e) The commissioner shall accept custody of a juvenile under an order issued by the family court pursuant to the provisions of section 322.2 of the family court act. He **or she** may place the juvenile in any appropriate facility or program under his **or her** jurisdiction, but he **or she** shall comply with any order requiring treatment in a residential facility made pursuant to paragraph (c) of subdivision five of section 322.2

of the family court act**, unless, after a hearing held in accordance with subdivision seven of section 322.2 of the family court act, the court modifies the order**. In determining the appropriate placement, the commissioner shall be furnished with a copy of the findings of the court pursuant to subdivision four or five of section 322.2 of the family court act and shall consider the nature of the act alleged in such findings and the level of the juvenile's mental disability. The commissioner shall review the condition of the juvenile in accordance with the requirements of section 322.2 of the family court act and he **or she** may petition the family court at any time for any relief authorized by such section.

§ 4. Subdivision (c) of section 13.09 of the mental hygiene law, as amended by chapter 920 of the laws of 1982, is amended to read as follows:

[~~(c)~~] **(c-1)** The commissioner shall accept custody of a juvenile under an order issued by the family court pursuant to the provisions of section 322.2 of the family court act. He **or she** may place the juvenile in any appropriate facility or program under his **or her** jurisdiction, but he **or she** shall comply with any order requiring treatment in a residential facility made pursuant to paragraph (c) of subdivision five of section 322.2 of the family court act**, unless, after a hearing held in accordance with subdivision seven of section 322.2 of the family court act, the court modifies the order**. In determining the appropriate placement, the commissioner shall be furnished with a copy of the findings of the court pursuant to subdivision four or five of section 322.2 of the family court act and shall consider the nature of the act alleged in such findings and the level of the juvenile's mental disability. The commissioner shall review the condition of the juvenile in accordance with the requirements of section 322.2 of the family court act and he **or she** may petition the family court at any time for any relief authorized by such section.

§ 5. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that the amendments made to paragraph (a) of subdivision 5 of section 322.2 of the family court act made by section two of this act shall take effect on the same date and in the same manner as section 69 of part WWW of chapter 59 of the laws of 2017, takes effect.