# STATE OF NEW YORK

8090--B

2019-2020 Regular Sessions

# IN ASSEMBLY

May 31, 2019

Introduced by M. of A. DAVILA -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Children and Families -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

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 1 of section 301.2 of the family court act, as amended by section 56 of part WWW of chapter 59 of the laws of 2017, is amended to read as follows:

1. "Juvenile delinquent" means a person over seven and less than [~~sixteen years of age, or commencing on October first, two thousand eighteen a person over seven and less than~~] seventeen years of age, and commencing October first, two thousand nineteen, a person over seven and less than eighteen years of age, who, having committed an act that would constitute a crime **if committed by an adult**, or **(with respect to a person over sixteen and less than seventeen years of age or, a person over sixteen and less than eighteen years of age commencing October first, two thousand nineteen)** a violation **as defined by subdivision three of section 10.00 of the penal law if committed by an adult**, where such violation is alleged to have occurred in the same transaction or occurrence of the alleged criminal act[~~, if committed by an adult~~], **and where such person:** (a) is not criminally responsible for such conduct by reason of infancy, or (b) is the defendant in an action ordered removed from a criminal court to the family court pursuant to article seven hundred twenty-five of the criminal procedure law.

§ 2. Subdivision 3 of section 302.1 of the family court act, as added by section 56-a of part WWW of chapter 59 of the laws of 2017, is amended to read as follows:

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

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3. [~~Whenever~~] With respect to a youth over sixteen and less than seventeen years of age or, a person over sixteen and less than eighteen years of age commencing October first, two thousand nineteen, whenever a crime and a violation arise out of the same transaction or occurrence, a charge alleging both offenses shall be made returnable before the court having jurisdiction over the crime. Nothing herein provided shall be construed to prevent a court, having jurisdiction over a violation relating to a criminal act from lawfully entering an order in accordance with section 345.1 of this article where such order is not based upon the count or counts of the petition alleging such criminal act.

§ 3. 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.

§ 4. Subdivision 13 of section 308.1 of the family court act, as added by chapter 920 of the laws of 1982, is amended and a new subdivision 14 is added to read as follows:

13. The provisions of this section shall not apply where the petition is an order of removal to the family court pursuant to article seven hundred twenty-five of the criminal procedure law against a juvenile offender as defined in subdivision eighteen of section 10.00 of the penal law.

14. Notwithstanding subdivisions three, four and thirteen of this section, the probation service may adjust a proceeding where the court has referred a case to the probation service in accordance with section 320.6 of this article in conjunction with or subsequent to the issuance of an order pursuant to subdivision one of section 345.1 of this article where such order does not include a fact-finding for an act which would constitute a juvenile offense, designated felony or offense listed in subdivision four of this section. Where a proceeding has been referred to the probation service in which an order issued pursuant to section 345.1 of this article consists solely of a violation as defined in subdivision three of section 10.00 of the penal law committed by a juvenile sixteen years of age or, commencing on October first, two thousand nineteen, seventeen years of age, the probation service shall adjust the matter unless good cause is shown and is documented in its records.

§ 5. Section 315.3 of the family court act is amended by adding a new subdivision 4 to read as follows:

4. Where an order of fact-finding that includes solely a violation as defined in subdivision three of section 10.00 of the penal law committed by a juvenile sixteen years of age or, commencing on October first, two thousand nineteen, seventeen years of age, has been entered pursuant to section 345.1 of this article, there shall be a rebuttable presumption that the court shall adjourn the case in contemplation of dismissal pursuant to this section, refer the case to the probation service for adjustment services pursuant to section 320.6 of this article or dismiss the case pursuant to subdivision two of section 352.1 of this article.

§ 6. Subdivision 2 of section 320.6 of the family court act, as amended by chapter 926 of the laws of 1982, is amended to read as follows:

2. At the initial appearance or at any subsequent appearance, the court may[~~, with the consent of the victim or complainant and the~~

~~respondent,~~] refer a case to the probation service for adjustment services. **The probation service shall consider the views of the complainant and the impact of the alleged act or acts of juvenile delinquency upon the complainant and upon the community in determining whether adjustment under this section would be suitable.** In the case of a designated felony petition**,** the consent of the presentment agency shall [~~also~~] be required to refer a case to **the** probation [~~services~~] **service** for adjustment services. **Where an order of fact-finding that includes solely a violation as defined in subdivision three of section 10.00 of the penal law committed by a juvenile sixteen years of age or, commencing on October first, two thousand nineteen, seventeen years of age, has been entered pursuant to section 345.1 of this article, there shall be a rebuttable presumption that the court shall refer the case to the probation service for adjustment services in accordance with this subdivision, dismiss the case pursuant to subdivision two of section 352.1 of this article or adjourn the case in contemplation of dismissal pursuant to section 315.3 of this article.**

§ 7. Section 345.1 of the family court act is amended by adding a new subdivision 3 to read as follows:

**3. Where an order of fact-finding that includes solely a violation as defined in subdivision three of section 10.00 of the penal law committed by a juvenile sixteen years of age or, commencing on October first, two thousand nineteen, seventeen years of age, has been entered pursuant to subdivision one of this section, there shall be a rebuttable presumption that the court shall refer the case to the probation service for adjustment services in accordance with section 320.6 of this article, dismiss the case pursuant to subdivision two of section 352.1 of this article or adjourn the case in contemplation of dismissal pursuant to section 315.3 of this article.**

§ 8. 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 **of this article**, except as provided in subdivision three **of this section; provided, however, that if the respondent has been found to have committed solely a violation as defined in subdivision three of section 10.00 of the penal law, the respondent shall not be detained pending disposition**.

§ 9. 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 **years of age** or [~~older~~]**, commencing on October first, two thousand nineteen, seventeen years of age,** that would **solely** constitute a violation **as defined in subdivision three of section 10.00 of the penal law and if the presumption pursuant to subdivision three of section 345.1 of this article has been rebutted**, the court shall have the power to enter an order of disposition in accordance with [~~paragraphs~~] **paragraph** (a) [~~and (b)~~] of subdivision one of this section. **The court shall not order detention, probation or placement of a youth solely adjudicated under this subdivision.**

§ 10. 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.

§ 11. Section 375.2 of the family court act is amended by adding a new subdivision 7 to read as follows:

**7. Where an order of fact-finding has been issued pursuant to subdivision one of section 345.1 of this article that includes solely a violation as defined in subdivision three of section 10.00 of the penal law committed by a juvenile sixteen years of age or, commencing on October first, two thousand nineteen, seventeen years of age, the records shall be sealed automatically at the expiration, as applicable, of a successful period of an adjustment, adjournment in contemplation of dismissal or conditional discharge.**

§ 12. 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.

§ 13. This act shall take effect immediately.