

STATE OF NEW YORK

5516

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

AN ACT to amend the family court act, 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:

1 Section 1. Subdivision 1 of section 322.1 of the family court act, as
2 amended by chapter 566 of the laws of 1994, is amended to read as
3 follows:
4 1. At any proceeding under this article, the court must issue an order
5 that the respondent be examined as provided herein when it is of the
6 opinion that the respondent may be an incapacitated person. Notwith-
7 standing the provisions of this or any other law, the court may direct
8 that the examination be conducted on an outpatient basis [~~when~~]. If the
9 respondent is [~~not~~] in custody at the time the court issues an order of
10 examination, the examination may be conducted at the place where the
11 respondent is being held in custody. The court shall order that two
12 qualified psychiatric examiners as defined in subdivision seven of
13 section 730.10 of the criminal procedure law examine the respondent to
14 determine if he or she is mentally ill, [~~mentally-retarded-or~~] intellec-
15 tually or developmentally disabled.
16 § 2. Subdivision 4, paragraphs (a), (c) and (d) of subdivision 5 and
17 subdivisions 6 and 7 of section 322.2 of the family court act, subdivi-
18 sions 4, 6 and 7 and paragraph (c) of subdivision 5 as added by chapter
19 920 of the laws of 1982, paragraph (a) of subdivision 5 as amended by
20 section 69 of part WWW of chapter 59 of the laws of 2017, and paragraph
21 (d) of subdivision 5 as amended by chapter 41 of the laws of 2010, are
22 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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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. 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) of section 13.09, as added by chapter 531 of the laws of 1979, 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.~~

~~(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

1 respondent is at a residential facility. Upon receipt of such applica-
2 tion, the court may on its own motion conduct a hearing to determine
3 whether there is substantial probability that the respondent will
4 continue to be incapacitated for the foreseeable future, and it must
5 conduct such hearing if a demand therefor is made by the respondent or
6 the mental hygiene legal service within ten days from the date that
7 notice of the application was given to them. The respondent may apply to
8 the court for an order of dismissal on the same ground.

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

15 7. If the commissioner having custody of a child committed to a resi-
16 dential facility pursuant to subdivision four or paragraph (a) of subdivi-
17 vision five of this section determines at any time that such child may
18 be more appropriately treated in a non-residential facility or on an
19 outpatient basis, he or she may arrange for such treatment. If the
20 commissioner having custody of a child committed to a residential facil-
21 ity pursuant to paragraph (c) of subdivision five of this section deter-
22 mines at any time that such child may be more appropriately treated in a
23 non-residential facility or on an outpatient basis, he or she may peti-
24 tion the family court for a hearing. If the court finds after a hearing
25 that treatment in a non-residential facility or on an outpatient basis
26 would be more appropriate for such child, the court shall modify its
27 order of commitment to [~~authorize~~] direct the commissioner to transfer
28 [~~of such~~] the child to a non-residential facility or arrange outpatient
29 treatment. Application for [~~such~~] a hearing to determine whether any
30 child committed to a residential facility under subdivisions four or
31 five of this section may be more appropriately treated in a non-residen-
32 tial facility or on an outpatient basis may be made by the respondent.

33 § 3. This act shall take effect on the ninetieth day after it shall
34 have become a law; provided, however, that the amendments made to para-
35 graph (a) of subdivision 5 of section 322.2 of the family court act made
36 by section two of this act shall take effect on the same date and in the
37 same manner as section 69 of Part WWW of chapter 59 of the laws of 2017,
38 takes effect.