

# STATE OF NEW YORK

7171

2021-2022 Regular Sessions

## IN SENATE

June 4, 2021

Introduced by Sen. BRISPORT -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed 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:

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

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

20 § 2. Subdivision 3 of section 302.1 of the family court act, as added  
21 by section 56-a of part WWW of chapter 59 of the laws of 2017, is  
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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1     3. [~~Whenever~~] With respect to a youth over sixteen and less than  
2 seventeen years of age or, a person over sixteen and less than eighteen  
3 years of age commencing October first, two thousand nineteen, whenever a  
4 crime and a violation arise out of the same transaction or occurrence, a  
5 charge alleging both offenses shall be made returnable before the court  
6 having jurisdiction over the crime. Nothing herein provided shall be  
7 construed to prevent a court, having jurisdiction over a violation  
8 relating to a criminal act from lawfully entering an order in accordance  
9 with section 345.1 of this article where such order is not based upon  
10 the count or counts of the petition alleging such criminal act.

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

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

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

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

27     14. Notwithstanding subdivisions three, four and thirteen of this  
28 section, the probation service may adjust a proceeding where the court  
29 has referred a case to the probation service in accordance with section  
30 320.6 of this article in conjunction with or subsequent to the issuance  
31 of an order pursuant to subdivision one of section 345.1 of this article  
32 where such order does not include a fact-finding for an act which would  
33 constitute a juvenile offense, designated felony or offense listed in  
34 subdivision four of this section. Where a proceeding has been referred  
35 to the probation service in which an order issued pursuant to section  
36 345.1 of this article consists solely of a violation as defined in  
37 subdivision three of section 10.00 of the penal law committed by a juve-  
38 nile sixteen years of age or, commencing on October first, two thousand  
39 nineteen, seventeen years of age, the probation service shall adjust the  
40 matter unless good cause is shown and is documented in its records.

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

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

52     § 6. Subdivision 2 of section 320.6 of the family court act, as  
53 amended by chapter 310 of the laws of 2019, is amended to read as  
54 follows:

55     2. At the initial appearance or at any subsequent appearance, the  
56 court may refer a case to the probation service for adjustment services.

1 The probation service shall consider the views of the complainant and  
2 the impact of the alleged act or acts of juvenile delinquency upon the  
3 complainant and upon the community in determining whether adjustment  
4 under this section would be suitable. In the case of a designated felony  
5 petition, the consent of the presentment agency shall be required to  
6 refer a case to the probation service for adjustment services. Where an  
7 order of fact-finding that includes solely a violation as defined in  
8 subdivision three of section 10.00 of the penal law committed by a juve-  
9 nile sixteen years of age or, commencing on October first, two thousand  
10 nineteen, seventeen years of age, has been entered pursuant to section  
11 345.1 of this article, there shall be a rebuttable presumption that the  
12 court shall refer the case to the probation service for adjustment  
13 services in accordance with this subdivision, dismiss the case pursuant  
14 to subdivision two of section 352.1 of this article or adjourn the case  
15 in contemplation of dismissal pursuant to section 315.3 of this article.

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

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

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

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

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

42 4. Where a youth receives a juvenile delinquency adjudication for  
43 conduct committed when the youth was [~~age~~] sixteen years of age or  
44 [~~older~~], commencing on October first, two thousand nineteen, seventeen  
45 years of age, that would solely constitute a violation as defined in  
46 subdivision three of section 10.00 of the penal law and if the presump-  
47 tion pursuant to subdivision three of section 345.1 of this article has  
48 been rebutted, the court shall have the power to enter an order of  
49 disposition in accordance with [~~paragraphs~~] paragraph (a) [~~and—(b)~~] of  
50 subdivision one of this section. The court shall not order detention,  
51 probation or placement of a youth solely adjudicated under this subdivi-  
52 sion.

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

55 6. At the conclusion of the hearing the court may revoke, continue or  
56 modify the order of probation or conditional discharge. If the court

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

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

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

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

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

50 § 13. This act shall take effect immediately.