

NY CLS Family Ct Act § 308.1

Current through 2018 Chapters 1-321

New York Consolidated Laws Service > Family Court Act (§ 111) > Article 3 Juvenile Delinquency (Pts. 1 — 8) > Part 1 Jurisdiction and Preliminary Procedures (§§ 301.1 — 315.3)

§ 308.1. Rules of court for preliminary procedure

1. Rules of court shall authorize and determine the circumstances under which the probation service may confer with any person seeking to have a juvenile delinquency petition filed, the potential respondent and other interested persons concerning the advisability of requesting that a petition be filed.
2. Except as provided in subdivisions three and four of this section, the probation service may, in accordance with rules of court, adjust suitable cases before a petition is filed. The inability of the respondent or his or her family to make restitution shall not be a factor in a decision to adjust a case or in a recommendation to the presentment agency pursuant to subdivision six of this section. Nothing in this section shall prohibit the probation service or the court from directing a respondent to obtain employment and to make restitution from the earnings from such employment. Nothing in this section shall prohibit the probation service or the court from directing an eligible person to complete an education reform program in accordance with section four hundred fifty-eight-l of the social services law.
3. The probation service shall not adjust a case in which the child has allegedly committed a designated felony act unless it has received the written approval of the court.
4. The probation service shall not adjust a case in which the child has allegedly committed a delinquent act which would be a crime defined in section 120.25, (reckless endangerment in the first degree), subdivision one of section 125.15, (manslaughter in the second degree), subdivision one of section 130.25, (rape in the third degree), subdivision one of section 130.40, (criminal sexual act in the third degree), subdivision one or two of section 130.65, (sexual abuse in the first degree), section 135.65, (coercion in the first degree), section 140.20, (burglary in the third degree), section 150.10, (arson in the third degree), section 160.05, (robbery in the third degree), subdivision two, three or four of section 265.02, (criminal possession of a weapon in the third degree), section 265.03, (criminal possession of a weapon in the second degree), or section 265.04, (criminal possession of a dangerous weapon in the first degree) of the penal law where the child has previously had one or more adjustments of a case in which such child allegedly committed an act which would be a crime specified in this subdivision unless it has received written approval from the court and the appropriate presentment agency.
5. The fact that a child is detained prior to the filing of a petition shall not preclude the probation service from adjusting a case; upon adjusting such a case the probation service shall notify the detention facility to release the child.

6. The probation service shall not transmit or otherwise communicate to the presentment agency any statement made by the child to a probation officer. However, the probation service may make a recommendation regarding adjustment of the case to the presentment agency and provide such information, including any report made by the arresting officer and record of previous adjustments and arrests, as it shall deem relevant.
7. No statement made to the probation service prior to the filing of a petition may be admitted into evidence at a fact-finding hearing or, if the proceeding is transferred to a criminal court, at any time prior to a conviction.
8. The probation service may not prevent any person who wishes to request that a petition be filed from having access to the appropriate presentment agency for that purpose.
9. Efforts at adjustment pursuant to rules of court under this section may not extend for a period of more than two months without leave of the court, which may extend the period for an additional two months.
10. If a case is not adjusted by the probation service, such service shall notify the appropriate presentment agency of that fact within forty-eight hours or the next court day, whichever occurs later.
11. The probation service may not be authorized under this section to compel any person to appear at any conference, produce any papers, or visit any place.
12. The probation service shall certify to the division of criminal justice services and to the appropriate police department or law enforcement agency whenever it adjusts a case in which the potential respondent's fingerprints were taken pursuant to section 306.1 in any manner other than the filing of a petition for juvenile delinquency for an act which, if committed by an adult, would constitute a felony, provided, however, in the case of a child eleven or twelve years of age, such certification shall be made only if the act would constitute a class A or B felony.
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.

History

Add, L 1982, ch 920, § 1, eff July 1, 1983; amd, L 1982, ch 926, § 2; L 1983, ch 398, §§ 11, 12, eff July 1, 1983; L 1985, ch 663, §§ 3, 4, eff Aug 27, 1985; L 1988, ch 252, § 1, eff July 11, 1988; [L 2003, ch 264, § 60](#), eff Nov 1, 2003; [L 2012, ch 55, § 3](#) (Part V), eff May, 20, 2012.

Annotations

Notes

Editor's Notes

[Laws 2012, ch 55, § 1 \(Part V\)](#), eff May 20, 2012, provides as follows:

Section 1. Legislative intent. In recent years, New York has seen the inappropriate and harmful use of technology increase exponentially among the juvenile population due to the accessibility and

interconnectivity of this form of communication. This problem has become more serious as the violence and gravity of the behavior has escalated, reaching into traditional sanctuaries for our children including their homes. Notably, this has resulted in tragic cases of suicide as well as various cases of long-term impairments to both the victim and the aggressor. Both the acts of cyberbullying and sexting include components of aggressive behavior, significant disrespect to an individual, and emotional trauma. Although New York has taken initial steps to address bullying, a comprehensive and multi-tiered approach to this activity is imperative in order to appropriately tackle the behavior as well as its repercussions. This requires cooperation among all members of our community, including schools, family units, and the criminal justice system. This legislation is a component of this inclusive approach by creating an appropriate educational program for the youth whose action or behavior has come to the attention of the judicial system.

Amendment Notes:

2012. Chapter 55, § 3 (Part V) amended:

Sub 2 by adding the matter in italics.

2003. Chapter 264, § 60 amended:

Sub 4 by deleting at fig 1 "sodomy" and adding the matter in italics.