S T A T E O F N E W Y O R K

6678

I N S E N A T E

March 8, 2012

Introduced by Sen. SALAND -- (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 adjournments in contemplation of dismissal and suspended judgments in child protective proceedings in the family court

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 1039 of the family court act, as amended by chapter 707 of the laws of 1975, subdivisions (a), (b), (c), (d) and (e) as amended by chapter 41 of the laws of 2010 and subdivision (f) as amended by chapter 601 of the laws of 1985, is amended to read as follows:

S 1039. Adjournment in contemplation of dismissal. (a) (I) Prior to [or upon] THE ENTRY OF a fact-finding [hearing] ORDER, the court may, upon a motion by [the petitioner with the consent of the respondent and] ANY PARTY OR the child's attorney WITH THE CONSENT OF ALL PARTIES AND THE CHILD'S ATTORNEY, or upon its own motion with the consent of [the petitioner, the respondent] ALL PARTIES and the child's attorney, order that the proceeding be ["]adjourned in contemplation of dismissal[". Under no circumstances shall the court order any party to consent to an order under this section].

(II) AFTER ENTRY OF A FACT-FINDING ORDER BUT PRIOR TO THE ENTRY OF A DISPOSITIONAL ORDER, THE COURT MAY, WITH CONSENT OF THE RESPONDENT AND UPON MOTION OF ANY PARTY OR THE CHILD'S ATTORNEY OR UPON ITS OWN MOTION WITHOUT REQUIRING THE CONSENT OF THE PETITIONER OR ATTORNEY FOR THE CHILD, ORDER THAT THE PROCEEDING BE ADJOURNED IN CONTEMPLATION OF DISMISSAL. THE PETITIONER, RESPONDENT AND ATTORNEY FOR THE CHILD HAVE A RIGHT TO BE HEARD WITH RESPECT TO THE MOTION.

(III) The court may make [such] AN order UNDER THIS SECTION only after it has apprised the respondent of the provisions of this section and it is satisfied that the respondent understands the effect of such provisions. UNDER NO CIRCUMSTANCES SHALL THE COURT ORDER ANY PARTY TO CONSENT TO AN ORDER UNDER THIS SECTION. THE COURT SHALL STATE ITS

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

LBD11106-01-1

REASONS ON THE RECORD FOR ORDERING AN ADJOURNMENT IN CONTEMPLATION OF DISMISSAL UNDER THIS SECTION.

(b) An adjournment in contemplation of dismissal is an adjournment of the proceeding for a period not to exceed one year with a view to ultimate dismissal of the petition in furtherance of justice. IN THE CASE OF AN ADJOURNMENT IN CONTEMPLATION OF DISMISSAL AFTER THE ENTRY OF A FACT-FINDING ORDER, SUCH DISMISSAL INCLUDES VACATUR OF THE FACT-FINDING ORDER.

(I) Upon the consent of the petitioner, the respondent and the child's attorney, the court may issue an order extending [such] THE period OF AN ADJOURNMENT IN CONTEMPLATION OF DISMISSAL ISSUED PURSUANT TO PARAGRAPH (I) OF SUBDIVISION (A) OF THIS SECTION PRIOR TO THE ENTRY OF A FACT-FINDING ORDER for such time and upon such conditions as may be agreeable to the parties.

(II) FOR GOOD CAUSE SHOWN AND WITH THE CONSENT OF THE RESPONDENT, THE COURT MAY, ON ITS OWN MOTION OR ON MOTION OF ANY PARTY OR THE ATTORNEY FOR THE CHILD AND AFTER PROVIDING NOTICE AND AN OPPORTUNITY TO BE HEARD TO ALL PARTIES AND THE ATTORNEY FOR THE CHILD, ISSUE AN ORDER EXTENDING AN ADJOURNMENT IN CONTEMPLATION OF DISMISSAL ISSUED PURSUANT TO PARAGRAPH (II) OF SUBDIVISION (A) OF THIS SECTION AFTER ENTRY OF A FACT-FINDING ORDER FOR SUCH TIME AND UPON SUCH CONDITIONS AS MAY BE IN THE BEST INTERESTS OF THE CHILD OR CHILDREN WHO ARE THE SUBJECTS OF THE PROCEEDING.

(III) THE COURT SHALL STATE ITS REASONS ON THE RECORD FOR EXTENDING AN ADJOURNMENT IN CONTEMPLATION OF DISMISSAL UNDER THIS SUBDIVISION, INCLUDING ITS REASONS FOR CHANGES IN THE TERMS AND CONDITIONS, IF ANY.

(c) [Such] THE order [may] SHALL include terms and conditions [agreeable to the parties and to the court, provided that such terms and conditions] IN FURTHERANCE OF THE BEST INTERESTS OF THE CHILD OR CHILDREN WHO ARE THE SUBJECTS OF THE PROCEEDING AND shall include, BUT NOT BE LIMITED TO, a requirement that the child and the respondent be under the supervision of a child protective agency during the adjournment period. EXCEPT AS PROVIDED IN SUBDIVISION (G) OF THIS SECTION, AN ORDER PURSUANT TO SECTION ONE THOUSAND SEVENTEEN, OR SECTION ONE THOUSAND FIFTY-FIVE OF THIS ARTICLE SHALL NOT BE MADE IN ANY CASE ADJOURNED UNDER THIS SECTION; NOR SHALL AN ORDER UNDER THIS SECTION CONTAIN A CONDITION REQUIRING THE CHILD OR CHILDREN TO BE PLACED VOLUNTARILY PURSUANT TO SECTIONS THREE HUNDRED FIFTY-EIGHT AND THREE HUNDRED EIGHTY-FOUR-A OF THE SOCIAL SERVICES LAW. In any order issued pursuant to this section, [such agency] THE PETITIONER shall be directed to make a progress report to the court, the parties and the child's attorney on the implementation of such order, no later than ninety days after the issuance of such order[, unless the court determines that the facts and circumstances of the case do not require such reports to be made] AND SHALL SUBMIT A REPORT PURSUANT TO SECTION ONE THOUSAND FIFTY-EIGHT OF THIS ARTICLE NO LATER THAN SIXTY DAYS PRIOR TO THE EXPIRATION OF THE ORDER. The [child protective agency] PETITIONER shall make further reports to the court, the parties and the child's attorney in such manner and at such times as the court may direct.

(d) Upon application of the respondent, the petitioner[,] OR the child's attorney or upon the court's own motion, made at any time during the duration of the order, if the child protective agency has failed substantially to provide the respondent with adequate supervision or to observe the terms and conditions of the order, the court may direct the child protective agency to observe such terms and conditions and provide

adequate supervision or may make any order authorized pursuant to section two hundred fifty-five OR ONE THOUSAND FIFTEEN-A of this act.

(e) [Upon application of] IF, PRIOR TO THE EXPIRATION OF THE PERIOD OF AN ADJOURNMENT IN CONTEMPLATION OF DISMISSAL, A MOTION OR ORDER TO SHOW CAUSE IS FILED BY the petitioner or the child's attorney or upon the court's own motion, made at any time during the duration of the order, [the] THAT ALLEGES A VIOLATION OF THE TERMS AND CONDITIONS OF THE ADJOURNMENT, THE PERIOD OF THE ADJOURNMENT IN CONTEMPLATION OF DISMISSAL IS TOLLED AS OF THE DATE OF SUCH FILING UNTIL THE ENTRY OF AN ORDER DISPOSING OF THE MOTION OR ORDER TO SHOW CAUSE. THE court may REVOKE THE ADJOURNMENT IN CONTEMPLATION OF DISMISSAL AND restore the matter to the calendar OR THE COURT MAY EXTEND THE PERIOD OF THE ADJOURNMENT IN CONTEMPLATION OF DISMISSAL PURSUANT TO SUBDIVISION (B) OF THIS SECTION, if the court finds after a hearing ON THE ALLEGED VIOLATION that the respondent has failed substantially to observe the terms and conditions of the order or to cooperate with the supervising child protective agency. [In such event] WHERE THE COURT HAS REVOKED THE ADJOURNMENT IN CONTEMPLATION OF DISMISSAL AND RESTORED THE MATTER TO THE CALENDAR:

(I) IN THE CASE OF AN ADJOURNMENT IN CONTEMPLATION OF DISMISSAL ISSUED PRIOR TO THE ENTRY OF A FACT-FINDING ORDER, unless the parties consent to an order pursuant to section one thousand fifty-one of this [act] ARTICLE or unless the petition is dismissed upon the consent of the petitioner, the court shall thereupon proceed to a fact-finding hearing under this article no later than sixty days after [such] THE application TO RESTORE THE MATTER TO THE CALENDAR, unless such period is extended by the court for good cause shown; OR

(II) IN THE CASE OF AN ADJOURNMENT IN CONTEMPLATION OF DISMISSAL ISSUED AFTER THE ENTRY OF A FACT-FINDING ORDER, THE COURT SHALL THEREUPON PROCEED TO A DISPOSITIONAL HEARING UNDER THIS ARTICLE NO LATER THAN THIRTY DAYS AFTER THE APPLICATION TO RESTORE THE MATTER TO THE CALENDAR, UNLESS SUCH PERIOD IS EXTENDED BY THE COURT FOR GOOD CAUSE SHOWN.

(III) THE COURT SHALL STATE ITS REASONS ON THE RECORD FOR REVOKING AN ADJOURNMENT IN CONTEMPLATION OF DISMISSAL AND RESTORING THE MATTER TO THE CALENDAR UNDER THIS SUBDIVISION.

(f) If the proceeding is not [so] restored to the calendar AS A RESULT OF A FINDING OF AN ALLEGED VIOLATION PURSUANT TO SUBDIVISION (E) OF THIS SECTION AND IF THE ADJOURNMENT IN CONTEMPLATION OF DISMISSAL IS NOT EXTENDED PURSUANT TO SUBDIVISION (B) OF THIS SECTION, the petition is, at the expiration of the adjournment IN CONTEMPLATION OF DISMISSAL period, deemed to have been dismissed by the court in furtherance of justice [unless an application is pending pursuant to subdivision (e) of this section]. If [such application is granted] THE COURT FINDS A VIOLATION PURSUANT TO SUBDIVISION (E) OF THIS SECTION, the petition shall not be dismissed and shall proceed in accordance with the provisions of such subdivision (e).

(g) Notwithstanding the provisions of this section, IF A MOTION OR ORDER TO SHOW CAUSE IS FILED ALLEGING A VIOLATION PURSUANT TO SUBDIVISION (E) OF THIS SECTION AND THE COURT FINDS THAT REMOVAL OF THE CHILD FROM THE HOME IS NECESSARY PURSUANT TO SECTION ONE THOUSAND TWENTY-SEVEN OF THIS ARTICLE DURING THE PENDENCY OF THE VIOLATION MOTION OR ORDER TO SHOW CAUSE, the court[,] may, at any time prior to dismissal of the petition pursuant to subdivision (f) OF THIS SECTION, issue an order authorized pursuant to section one thousand twenty-seven OF THIS ARTICLE. NOTHING IN THIS SECTION SHALL PRECLUDE THE CHILD PROTECTIVE AGENCY FROM TAKING EMERGENCY ACTION PURSUANT TO SECTION ONE THOUSAND TWENTY-FOUR OF THIS ARTICLE WHERE COMPELLED BY THE TERMS OF THAT

SECTION. IF THE VIOLATION IS FOUND AND THE MATTER IS RESTORED TO THE CALENDAR, THE COURT MAY MAKE FURTHER ORDERS IN ACCORDANCE WITH SUBDIVISION (E) OF THIS SECTION.

S 2. Section 1053 of the family court act, as added by chapter 962 of the laws of 1970 and subdivision (c) as amended by chapter 41 of the laws of 2010, is amended to read as follows:

S 1053. Suspended judgment. (a) Rules of court shall define permissible terms and conditions of a suspended judgment. These terms and conditions shall relate to the acts or omissions of the parent or other person legally responsible for the care of the child.

(b) The maximum duration of any term or condition of a suspended judgment is one year, unless the court finds at the conclusion of that period, upon a hearing, that exceptional circumstances require an extension thereof for A PERIOD OF UP TO an additional year. THE COURT SHALL STATE ITS REASONS ON THE RECORD FOR EXTENDING A PERIOD OF SUSPENDED JUDGMENT UNDER THIS SUBDIVISION, INCLUDING ITS REASONS FOR CHANGES IN THE TERMS AND CONDITIONS, IF ANY.

(c) Except as provided for herein, in any order issued pursuant to this section, the court may require the child protective agency to make progress reports to the court, the parties, and the child's attorney on the implementation of such order. Where the order of disposition is issued upon the consent of the parties and the child's attorney, such agency shall report to the court, the parties and the child's attorney no later than ninety days after the issuance of the order, unless the court determines that the facts and circumstances of the case do not require such report to be made.

(D) THE ORDER OF SUSPENDED JUDGMENT MUST SET FORTH THE DURATION, TERMS AND CONDITIONS OF THE SUSPENDED JUDGMENT, AND MUST CONTAIN A DATE CERTAIN FOR A COURT REVIEW NOT LATER THAN THIRTY DAYS PRIOR TO THE EXPIRATION OF THE PERIOD OF SUSPENDED JUDGMENT. THE ORDER OF SUSPENDED JUDGMENT ALSO MUST STATE IN CONSPICUOUS PRINT THAT A FAILURE TO OBEY THE ORDER MAY LEAD TO ITS REVOCATION AND TO THE ISSUANCE OF ANY ORDER THAT MIGHT HAVE BEEN MADE AT THE TIME JUDGMENT WAS SUSPENDED. A COPY OF THE ORDER OF SUSPENDED JUDGMENT MUST BE FURNISHED TO THE RESPONDENT.

(E) NOT LATER THAN SIXTY DAYS BEFORE THE EXPIRATION OF THE PERIOD OF SUSPENDED JUDGMENT, THE PETITIONER SHALL FILE A REPORT, PURSUANT TO SECTION ONE THOUSAND FIFTY-EIGHT OF THIS ARTICLE, WITH THE FAMILY COURT AND ALL PARTIES, INCLUDING THE RESPONDENT AND HIS OR HER ATTORNEY, THE ATTORNEY FOR THE CHILD AND INTERVENORS, IF ANY, REGARDING THE RESPONDENT'S COMPLIANCE WITH THE TERMS OF THE SUSPENDED JUDGMENT. THE REPORT SHALL BE REVIEWED BY THE COURT ON THE SCHEDULED COURT DATE. UNLESS A MOTION OR ORDER TO SHOW CAUSE HAS BEEN FILED PRIOR TO THE EXPIRATION OF THE PERIOD OF SUSPENDED JUDGMENT ALLEGING A VIOLATION OR SEEKING AN EXTENSION OF THE PERIOD OF THE SUSPENDED JUDGMENT, THE TERMS OF THE DISPOSITION OF SUSPENDED JUDGMENT SHALL BE DEEMED SATISFIED. IN SUCH EVENT, THE COURT'S JURISDICTION OVER THE PROCEEDING SHALL BE TERMINATED. HOWEVER, THE ORDER OF FACT-FINDING AND THE PRESUMPTIVE EFFECT OF SUCH FINDING UPON RETENTION OF THE REPORT OF SUSPECTED ABUSE AND NEGLECT ON THE STATE CENTRAL REGISTER IN ACCORDANCE WITH PARAGRAPH (B) OF SUBDIVISION EIGHT OF SECTION FOUR HUNDRED TWENTY-TWO OF THE SOCIAL SERVICES LAW SHALL REMAIN IN EFFECT UNLESS THE COURT GRANTS A MOTION BY THE RESPONDENT TO VACATE THE ORDER OF FACT-FINDING PURSUANT TO SECTION ONE THOUSAND SIXTY-ONE OF THIS ARTICLE.

S 3. Section 1071 of the family court act, as amended by chapter 437 of the laws of 2006, is amended to read as follows:

S 1071. Failure to comply with terms and conditions of suspended judgment. If, prior to the expiration of the period of the suspended judgment, a motion or order to show cause is filed that alleges that a parent or other person legally responsible for a child's care violated the terms and conditions of a suspended judgment issued under section one thousand fifty-three of this article, the period of the suspended judgment shall be tolled AS OF THE DATE OF SUCH FILING pending disposition of the motion or order to show cause. IF A MOTION OR ORDER TO SHOW CAUSE ALLEGING A VIOLATION HAS BEEN FILED AND THE COURT FINDS THAT REMOVAL OF THE CHILD FROM THE HOME PENDING DISPOSITION OF THE MOTION OR ORDER TO SHOW CAUSE IS NECESSARY PURSUANT TO SECTION ONE THOUSAND TWENTY-SEVEN OF THIS ARTICLE, THE COURT MAY ISSUE AN ORDER PURSUANT TO SUCH SECTION ONE THOUSAND TWENTY-SEVEN. NOTHING IN THIS SECTION SHALL PRECLUDE THE CHILD PROTECTIVE AGENCY FROM TAKING EMERGENCY ACTION PURSUANT TO SECTION ONE THOUSAND TWENTY-FOUR OF THIS ARTICLE WHERE COMPELLED BY THE TERMS OF THAT SECTION. If, after A hearing ON THE ALLEGED VIOLATION, the court is satisfied by competent proof that the parent or other person violated the order of suspended judgment, the court may revoke the suspension of judgment and enter any order that might have been made at the time judgment was suspended OR MAY EXTEND THE PERIOD OF SUSPENDED JUDGMENT PURSUANT TO SUBDIVISION (B) OF SECTION ONE THOUSAND FIFTY-THREE OF THIS ARTICLE. THE COURT SHALL STATE ITS REASONS FOR REVOKING OR EXTENDING A PERIOD OF SUSPENDED JUDGMENT UNDER THIS SECTION.

S 4. This act shall take effect on the ninetieth day after it shall have become a law.