

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:

1 Section 1. Section 1039 of the family court act, as amended by chapter
2 707 of the laws of 1975, subdivisions (a), (b), (c), (d) and (e) as
3 amended by chapter 41 of the laws of 2010 and subdivision (f) as amended
4 by chapter 601 of the laws of 1985, is amended to read as follows:
5 S 1039. Adjournment in contemplation of dismissal. (a) (I) Prior to
6 [or upon] THE ENTRY OF a fact-finding [hearing] ORDER, the court may,
7 upon a motion by [the petitioner with the consent of the respondent and]
8 ANY PARTY OR the child's attorney WITH THE CONSENT OF ALL PARTIES AND
9 THE CHILD'S ATTORNEY, or upon its own motion with the consent of [the
10 petitioner, the respondent] ALL PARTIES and the child's attorney, order
11 that the proceeding be ["adjourned in contemplation of dismissal[".
12 Under no circumstances shall the court order any party to consent to an
13 order under this section].
14 (II) AFTER ENTRY OF A FACT-FINDING ORDER BUT PRIOR TO THE ENTRY OF A
15 DISPOSITIONAL ORDER, THE COURT MAY, WITH CONSENT OF THE RESPONDENT AND
16 UPON MOTION OF ANY PARTY OR THE CHILD'S ATTORNEY OR UPON ITS OWN MOTION
17 WITHOUT REQUIRING THE CONSENT OF THE PETITIONER OR ATTORNEY FOR THE
18 CHILD, ORDER THAT THE PROCEEDING BE ADJOURNED IN CONTEMPLATION OF
19 DISMISSAL. THE PETITIONER, RESPONDENT AND ATTORNEY FOR THE CHILD HAVE A
20 RIGHT TO BE HEARD WITH RESPECT TO THE MOTION.
21 (III) The court may make [such] AN order UNDER THIS SECTION only after
22 it has apprised the respondent of the provisions of this section and it
23 is satisfied that the respondent understands the effect of such
24 provisions. UNDER NO CIRCUMSTANCES SHALL THE COURT ORDER ANY PARTY TO
25 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

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

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

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

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

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

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

50 (d) Upon application of the respondent, the petitioner[,] OR the
51 child's attorney or upon the court's own motion, made at any time during
52 the duration of the order, if the child protective agency has failed
53 substantially to provide the respondent with adequate supervision or to
54 observe the terms and conditions of the order, the court may direct the
55 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:

1 S 1071. Failure to comply with terms and conditions of suspended judg-
2 ment. If, prior to the expiration of the period of the suspended judg-
3 ment, a motion or order to show cause is filed that alleges that a
4 parent or other person legally responsible for a child's care violated
5 the terms and conditions of a suspended judgment issued under section
6 one thousand fifty-three of this article, the period of the suspended
7 judgment shall be tolled AS OF THE DATE OF SUCH FILING pending disposi-
8 tion of the motion or order to show cause. IF A MOTION OR ORDER TO SHOW
9 CAUSE ALLEGING A VIOLATION HAS BEEN FILED AND THE COURT FINDS THAT
10 REMOVAL OF THE CHILD FROM THE HOME PENDING DISPOSITION OF THE MOTION OR
11 ORDER TO SHOW CAUSE IS NECESSARY PURSUANT TO SECTION ONE THOUSAND TWEN-
12 TY-SEVEN OF THIS ARTICLE, THE COURT MAY ISSUE AN ORDER PURSUANT TO SUCH
13 SECTION ONE THOUSAND TWENTY-SEVEN. NOTHING IN THIS SECTION SHALL
14 PRECLUDE THE CHILD PROTECTIVE AGENCY FROM TAKING EMERGENCY ACTION PURSU-
15 ANT TO SECTION ONE THOUSAND TWENTY-FOUR OF THIS ARTICLE WHERE COMPELLED
16 BY THE TERMS OF THAT SECTION. If, after A hearing ON THE ALLEGED
17 VIOLATION, the court is satisfied by competent proof that the parent or
18 other person violated the order of suspended judgment, the court may
19 revoke the suspension of judgment and enter any order that might have
20 been made at the time judgment was suspended OR MAY EXTEND THE PERIOD OF
21 SUSPENDED JUDGMENT PURSUANT TO SUBDIVISION (B) OF SECTION ONE THOUSAND
22 FIFTY-THREE OF THIS ARTICLE. THE COURT SHALL STATE ITS REASONS FOR
23 REVOKING OR EXTENDING A PERIOD OF SUSPENDED JUDGMENT UNDER THIS SECTION.
24 S 4. This act shall take effect on the ninetieth day after it shall
25 have become a law.