

# STATE OF NEW YORK

4767

2017-2018 Regular Sessions

## IN SENATE

February 27, 2017

Introduced by Sen. AVELLA -- (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 § 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 ~~[u]~~adjourned in contemplation of dismissal~~[u.~~  
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

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

LBD07083-01-7

provisions. Under no circumstances shall the court order any party to consent to an order under this section. The court shall state its 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 subparagraphs (i) and (iii) of paragraph (a) of subdivision two of section one thousand seventeen, paragraphs (iii), (vi), and (vii) of subdivision (a) of section one thousand fifty-two, section one thousand fifty-five or section one thousand fifty-five-b 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

1 the duration of the order, if the child protective agency has failed  
2 substantially to provide the respondent with adequate supervision or to  
3 observe the terms and conditions of the order, the court may direct the  
4 child protective agency to observe such terms and conditions and provide  
5 adequate supervision or may make any order authorized pursuant to  
6 section two hundred fifty-five or one thousand fifteen-a of this act.

7 (e) ~~[Upon application of]~~ If, prior to the expiration of the period of  
8 an adjournment in contemplation of dismissal, a motion or order to show  
9 cause is filed by the petitioner or the child's attorney or upon the  
10 court's own motion, made at any time during the duration of the order,  
11 ~~[the]~~ that alleges a violation of the terms and conditions of the  
12 adjournment, the period of the adjournment in contemplation of dismissal  
13 is tolled as of the date of such filing until the entry of an order  
14 disposing of the motion or order to show cause. The court may revoke  
15 the adjournment in contemplation of dismissal and restore the matter to  
16 the calendar or the court may extend the period of the adjournment in  
17 contemplation of dismissal pursuant to subdivision (b) of this section,  
18 if the court finds after a hearing on the alleged violation that the  
19 respondent has failed substantially to observe the terms and conditions  
20 of the order or to cooperate with the supervising child protective agen-  
21 cy. ~~[In such event]~~ Where the court has revoked the adjournment in  
22 contemplation of dismissal and restored the matter to the calendar:

23 (i) in the case of an adjournment in contemplation of dismissal issued  
24 prior to the entry of a fact-finding order, unless the parties consent  
25 to an order pursuant to section one thousand fifty-one of this ~~[act]~~  
26 article or unless the petition is dismissed upon the consent of the  
27 petitioner, the court shall thereupon proceed to a fact-finding hearing  
28 under this article no later than sixty days after ~~[such]~~ the application  
29 to restore the matter to the calendar, unless such period is extended by  
30 the court for good cause shown; or

31 (ii) in the case of an adjournment in contemplation of dismissal  
32 issued after the entry of a fact-finding order, the court shall thereup-  
33 on proceed to a dispositional hearing under this article no later than  
34 thirty days after the application to restore the matter to the calendar,  
35 unless such period is extended by the court for good cause shown.

36 (iii) The court shall state its reasons on the record for revoking an  
37 adjournment in contemplation of dismissal and restoring the matter to  
38 the calendar under this subdivision.

39 (f) If the proceeding is not ~~[so]~~ restored to the calendar as a result  
40 of a finding of an alleged violation pursuant to subdivision (e) of this  
41 section and if the adjournment in contemplation of dismissal is not  
42 extended pursuant to subdivision (b) of this section, the petition is,  
43 at the expiration of the adjournment in contemplation of dismissal peri-  
44 od, deemed to have been dismissed by the court in furtherance of justice  
45 ~~[unless an application is pending pursuant to subdivision (e) of this~~  
46 ~~section].~~ If ~~[such application is granted]~~ the court finds a violation  
47 pursuant to subdivision (e) of this section, the petition shall not be  
48 dismissed and shall proceed in accordance with the provisions of such  
49 subdivision (e).

50 (g) Notwithstanding the provisions of this section, if a motion or  
51 order to show cause is filed alleging a violation pursuant to subdivi-  
52 sion (e) of this section and the court finds that removal of the child  
53 from the home is necessary pursuant to section one thousand twenty-seven  
54 of this article during the pendency of the violation motion or order to  
55 show cause, the court~~[7]~~ may, at any time prior to dismissal of the  
56 petition pursuant to subdivision (f) of this section, issue an order

1 authorized pursuant to section one thousand twenty-seven of this arti-  
2 cle. Nothing in this section shall preclude the child protective agency  
3 from taking emergency action pursuant to section one thousand twenty-  
4 four of this article where compelled by the terms of that section. If  
5 the violation is found and the matter is restored to the calendar, the  
6 court may make further orders in accordance with subdivision (e) of this  
7 section.

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

11 § 1053. Suspended judgment. (a) Rules of court shall define permissi-  
12 ble terms and conditions of a suspended judgment. These terms and condi-  
13 tions shall relate to the acts or omissions of the parent or other  
14 person legally responsible for the care of the child.

15 (b) The maximum duration of any term or condition of a suspended judg-  
16 ment is one year, unless the court finds at the conclusion of that peri-  
17 od, upon a hearing, that exceptional circumstances require an extension  
18 thereof for a period of up to an additional year. The court shall state  
19 its reasons on the record for extending a period of suspended judgment  
20 under this subdivision, including its reasons for changes in the terms  
21 and conditions, if any.

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

31 (d) The order of suspended judgment must set forth the duration, terms  
32 and conditions of the suspended judgment, and must contain a date  
33 certain for a court review not later than thirty days prior to the expi-  
34 ration of the period of suspended judgment. The order of suspended judg-  
35 ment also must state in conspicuous print that a failure to obey the  
36 order may lead to its revocation and to the issuance of any order that  
37 might have been made at the time judgment was suspended. A copy of the  
38 order of suspended judgment must be furnished to the respondent.

39 (e) Not later than sixty days before the expiration of the period of  
40 suspended judgment, the petitioner shall file a report, pursuant to  
41 section one thousand fifty-eight of this article, with the family court  
42 and all parties, including the respondent and his or her attorney, the  
43 attorney for the child and intervenors, if any, regarding the respond-  
44 ent's compliance with the terms of the suspended judgment. The report  
45 shall be reviewed by the court on the scheduled court date. Unless a  
46 motion or order to show cause has been filed prior to the expiration of  
47 the period of suspended judgment alleging a violation or seeking an  
48 extension of the period of the suspended judgment, the terms of the  
49 disposition of suspended judgment shall be deemed satisfied. In such  
50 event, the court's jurisdiction over the proceeding shall be terminated.  
51 However, the order of fact-finding and the presumptive effect of such  
52 finding upon retention of the report of suspected abuse and neglect on  
53 the state central register in accordance with paragraph (b) of subdivi-  
54 sion eight of section four hundred twenty-two of the social services law  
55 shall remain in effect unless the court grants a motion by the respond-

1 ent to vacate the order of fact-finding pursuant to section one thousand  
2 sixty-one of this article.

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

5 § 1071. Failure to comply with terms and conditions of suspended judg-  
6 ment. If, prior to the expiration of the period of the suspended judg-  
7 ment, a motion or order to show cause is filed that alleges that a  
8 parent or other person legally responsible for a child's care violated  
9 the terms and conditions of a suspended judgment issued under section  
10 one thousand fifty-three of this article, the period of the suspended  
11 judgment shall be tolled as of the date of such filing pending disposi-  
12 tion of the motion or order to show cause. If a motion or order to show  
13 cause alleging a violation has been filed and the court finds that  
14 removal of the child from the home pending disposition of the motion or  
15 order to show cause is necessary pursuant to section one thousand twen-  
16 ty-seven of this article, the court may issue an order pursuant to such  
17 section one thousand twenty-seven. Nothing in this section shall  
18 preclude the child protective agency from taking emergency action pursu-  
19 ant to section one thousand twenty-four of this article where compelled  
20 by the terms of that section. If, after a hearing on the alleged  
21 violation, the court is satisfied by competent proof that the parent or  
22 other person violated the order of suspended judgment, the court may  
23 revoke the suspension of judgment and enter any order that might have  
24 been made at the time judgment was suspended or may extend the period of  
25 suspended judgment pursuant to subdivision (b) of section one thousand  
26 fifty-three of this article. The court shall state its reasons for  
27 revoking or extending a period of suspended judgment under this section.

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