

# STATE OF NEW YORK

11022

## IN ASSEMBLY

October 7, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Weinstein)  
-- (at request of the Office of Court Administration) -- read once and  
referred to the Committee on Judiciary

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 Assem-  
bly, 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  
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.

LBD10895-01-9

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 fact-  
13 finding order for such time and upon such conditions as may be agreeable  
14 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 fact-  
21 finding order for such time and upon such conditions as may be in the  
22 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 subparagraphs (i) and (iii) of paragraph (a) of subdivision  
35 two of section one thousand seventeen, paragraphs (iii), (vi), and (vii)  
36 of subdivision (a) of section one thousand fifty-two, section one thou-  
37 sand fifty-five or section one thousand fifty-five-b of this article  
38 shall not be made in any case adjourned under this section; nor shall an  
39 order under this section contain a condition requiring the child or  
40 children to be placed voluntarily pursuant to sections three hundred  
41 fifty-eight and three hundred eighty-four-a of the social services law.  
42 In any order issued pursuant to this section, [~~such agency~~] the peti-  
43 tioner shall be directed to make a progress report to the court, the  
44 parties and the child's attorney on the implementation of such order, no  
45 later than ninety days after the issuance of such order[~~, unless the~~  
46 ~~court determines that the facts and circumstances of the case do not~~  
47 ~~require such reports to be made~~] and shall submit a report pursuant to  
48 section one thousand fifty-eight of this article no later than sixty  
49 days prior to the expiration of the order. The [~~child protective agency~~]  
50 petitioner shall make further reports to the court, the parties and the  
51 child's attorney in such manner and at such times as the court may  
52 direct.

53 (d) Upon application of the respondent, the petitioner[~~,~~] or the  
54 child's attorney or upon the court's own motion, made at any time during  
55 the duration of the order, if the child protective agency has failed  
56 substantially to provide the respondent with adequate supervision or to

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

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

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

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

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

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

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

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

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

10 § 1053. Suspended judgment. (a) Rules of court shall define permissi-  
11 ble terms and conditions of a suspended judgment. These terms and condi-  
12 tions shall relate to the acts or omissions of the parent or other  
13 person legally responsible for the care of the child.

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

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

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

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

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

3 § 1071. Failure to comply with terms and conditions of suspended judg-  
4 ment. If, prior to the expiration of the period of the suspended judg-  
5 ment, a motion or order to show cause is filed that alleges that a  
6 parent or other person legally responsible for a child's care violated  
7 the terms and conditions of a suspended judgment issued under section  
8 one thousand fifty-three of this article, the period of the suspended  
9 judgment shall be tolled as of the date of such filing pending disposi-  
10 tion of the motion or order to show cause. If a motion or order to show  
11 cause alleging a violation has been filed and the court finds that  
12 removal of the child from the home pending disposition of the motion or  
13 order to show cause is necessary pursuant to section one thousand twen-  
14 ty-seven of this article, the court may issue an order pursuant to such  
15 section one thousand twenty-seven. Nothing in this section shall  
16 preclude the child protective agency from taking emergency action pursu-  
17 ant to section one thousand twenty-four of this article where compelled  
18 by the terms of that section. If, after a hearing on the alleged  
19 violation, the court is satisfied by competent proof that the parent or  
20 other person violated the order of suspended judgment, the court may  
21 revoke the suspension of judgment and enter any order that might have  
22 been made at the time judgment was suspended or may extend the period of  
23 suspended judgment pursuant to subdivision (b) of section one thousand  
24 fifty-three of this article. The court shall state its reasons for  
25 revoking or extending a period of suspended judgment under this section.

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