# STATE OF NEW YORK

7683

2021-2022 Regular Sessions

# IN ASSEMBLY

May 19, 2021

Introduced by M. of A. LAVINE -- (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 authorizing adjournments in contemplation of dismissal in family offense cases in family court

**The People of the State of New York, represented in Senate and Assembly, do enact as follows:**

Section 1. The family court act is amended by adding a new section 829 to read as follows:

**§ 829. Adjournment in contemplation of dismissal. 1. Prior to or upon a fact-finding hearing, with the consent of the petitioner and the respondent and with the approval of the court, the proceeding may be adjourned in contemplation of dismissal. The court shall consider the position of the attorney for the child, if one has been appointed. Under no circumstances shall the court order any party to consent to an order under this section.**

**2. An "adjournment in contemplation of dismissal" shall mean an adjournment of the proceeding for a period not to exceed one year with an expectation of ultimate dismissal of the petition in furtherance of justice.**

**3. Such order of adjournment in contemplation of dismissal may include terms and conditions agreeable to the parties and to the court. The court may, as a condition of such order, issue a temporary order of protection in accordance with section eight hundred twenty-eight of this part. The duration of the temporary order of protection may not exceed the length of the adjournment in contemplation of dismissal. Compliance with the temporary order of protection shall be a condition of the order of adjournment in contemplation of dismissal.**

**4. Upon consent of the petitioner and respondent, and upon consideration of the position of the attorney for the child, if one has been**

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

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appointed, and with the approval of the court, the court may issue an order extending the adjournment in contemplation of dismissal for an additional period of up to one year upon terms and conditions agreeable to the parties and to the court.

5. Upon application of the petitioner alleging a violation of the temporary order of protection, or upon the court's own motion, made at any time during the duration of the adjournment in contemplation of dismissal, the court may restore the matter to the calendar if the court finds after a hearing based upon competent, relevant, and material evidence that the respondent has failed to comply with the terms and conditions of the temporary order of protection. Pending a determination after a hearing, the court may toll the expiration of any of the provisions of the order of adjournment in contemplation of dismissal, modify and/or extend the temporary order of protection, or issue a new temporary order of protection.

6. If the proceeding is not restored to the calendar at the expiration of the adjournment period, the petition is deemed to have been dismissed by the court in furtherance of justice, unless an application is pending pursuant to subdivision four of this section. If the application to restore the petition is granted, the petition shall not be dismissed and unless the parties agree to extend the order of adjournment in contemplation of dismissal or to dismissal of the petition, the court shall proceed either to a fact-finding hearing or to a dispositional hearing, if such order was issued after fact-finding.

§ 2. Subdivision (e) of section 841 of the family court act, as added by chapter 222 of the laws of 1994, is amended and a new subdivision (f) is added to read as follows:

(e) directing payment of restitution in an amount not to exceed ten thousand dollars. An order of restitution may be made in conjunction with any order of disposition authorized under subdivisions (b), (c), or (d) of this section. In no case shall an order of restitution be issued where the court determines that the respondent has already paid such restitution as part of the disposition or settlement of another proceeding arising from the same act or acts alleged in the petition before the court[~~.~~]; or

(f) adjourning the petition in contemplation of dismissal in accordance with section eight hundred twenty-nine of this article.

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