

# 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:

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

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

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

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

22 4. Upon consent of the petitioner and respondent, and upon consider-  
23 ation 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.

LBD10332-01-1

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

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

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

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

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

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

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