



Memo in Support of Amending CPL § 170.55 to Allow Judges to Shorten the Adjournment Period for Adjournments in Contemplation of Dismissal

Proposed Amendment

Subsection two of Criminal Procedure Law §170.55 is amended to read as follows:

(2) An adjournment in contemplation of dismissal is an adjournment of the action without date ordered with a view to ultimate dismissal of the accusatory instrument in furtherance of justice. Upon issuing such an order, the court must release the defendant on his OR HER own recognizance. ~~Upon application of the people, made at any time not more than~~ THE ADJOURNMENT SHALL BE FOR A PERIOD OF six months, or in the case of a family offense as defined in subdivision one of section 530.11 of this chapter, one year, ~~after the issuance of such order, the court may~~ BUT AT ANY TIME PRIOR TO DISMISSAL THE COURT MAY, IN FURTHERANCE OF JUSTICE:

A) UPON APPLICATION OF THE DEFENDANT AND ON NOTICE TO THE PEOPLE, REDUCE THE TERM OF THE ADJOURNMENT, OR

B) UPON APPLICATION OF THE PEOPLE AND ON NOTICE TO THE DEFENDANT, restore the case to the calendar ~~upon a determination that dismissal of the accusatory instrument would not be in furtherance of justice~~ and the action must thereupon proceed.

If the case is not so restored within ~~such six months or one year period~~ THE TERM OF ADJOURNMENT, the accusatory instrument is, at the expiration of such ~~period~~ TERM, deemed to have been dismissed by the court in furtherance of justice.

Reason for Amendment

Statistics provided by the State Division of Criminal Justice Services indicate that last year in New York City, 77,184 cases were Adjourned in Contemplation of Dismissal (ACD'd). Although the prosecutor may seek to restore a case to the calendar during the period of adjournment and prosecute it, only 1346 cases, 1.7% of the total, were restored to the calendar and resulted in ultimate conviction of some offense.

Nevertheless, many employers and licensing agencies, particularly public employers, suspend employees as soon as they are informed of the arrest and will not restore the job or license until the case is formally dismissed, even though the People, and the court, have indicated by agreeing to the ACD that they do not believe further prosecution is necessary. Similarly, the armed services will not allow a person to enlist while an ACD's case is pending, even though the case will almost certainly be dismissed.

The purpose of this amendment is to allow courts to relieve individuals of these unintended, unfair collateral consequences when their cases have been Adjourned in Contemplation of Dismissal with the prosecution's consent. CPL § 170.55 already states, in subd. 8, that "no person shall suffer any disability or forfeiture as a result of" an order granting an ACD, and that upon the dismissal of the accusatory instrument following an ACD, "the arrest and prosecution shall be deemed a nullity and the defendant

shall be restored, in contemplation of law, to the status he occupied before his arrest and prosecution." The Human Rights Law also protects against job discrimination in this situation. Exec. Law § 296(16). But persons whose ACD'd cases are technically "pending" during the period of adjournment are not legally protected under the Human Rights Law, making a statutory change necessary in order to effectuate the original legislative intent that individuals should not suffer disabilities as a result of arrests and prosecutions which terminate with an ACD.

The amendment would allow the Court, on notice to the People and in its discretion, to shorten the period of adjournment in order to relieve an individual of unnecessary burdens on the individual's ability to retain employment and thereby support himself and his or her family.

Section 170.56 of the CPL, relating to "marijuana" ACDs, already provides authority to reduce the term of the adjournment "at any time prior to dismissal," so the amendment merely extends to all ACDs the Court's discretionary authority that already exists in the case of marijuana ACDs. Currently, some Criminal Court judges believe they have this authority under CPL § 170.55, while others do not. The proposed amendment would establish a clear and uniform statewide rule, while leaving judges full discretion whether or not to exercise this authority in individual cases.

The other language changes in the proposed amendment are purely technical. The provision for notice to the defense, of the People's application to restore a case to the calendar, codifies existing caselaw and practice.

It may be noted that the existing statute does not actually specify the period of adjournment to be fixed by the Court, instead addressing the period within which the People may make a motion to restore, but the normal practice of Court clerks is to set a 6-month or 1-year period of adjournment, so the amendment would simply codify that practice.