

5461--B

2009-2010 Regular Sessions

I N S E N A T E

May 7, 2009

Introduced by Sen. SCHNEIDERMAN -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil practice law and rules, the domestic relations law, the executive law, the judiciary law, the family court act, the public health law and the social services law, in relation to the representation of children

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision (e) of section 1101 of the civil practice law
2 and rules, as amended by section 64 of part A of chapter 3 of the laws
3 of 2005, is amended to read as follows:
4 (e) When motion not required. Where a party is represented in a civil
5 action by a legal aid society or a legal services or other nonprofit
6 organization, which has as its primary purpose the furnishing of legal
7 services to indigent persons, or by private counsel working on behalf of
8 or under the auspices of such society or organization, all fees and
9 costs relating to the filing and service shall be waived without the
10 necessity of a motion and the case shall be given an index number, or,
11 in a court other than the supreme or county court, an appropriate filing
12 number, provided that a determination has been made by such society,
13 organization or attorney that such party is unable to pay the costs,
14 fees and expenses necessary to prosecute or defend the action, and that
15 an attorney's certification that such determination has been made is
16 filed with the clerk of the court along with the summons and complaint
17 or summons with notice or third-party summons and complaint or otherwise
18 provided to the clerk of the court. Where an attorney certifies, pursu-

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

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1 ant to section eleven hundred eighteen of the family court act, and in
2 accordance with procedures of the appropriate appellate division, that a
3 party or child who is the subject of an appeal has been represented in
4 the family court by assigned counsel [or a law guardian] or by a legal
5 aid society or a legal services or other nonprofit organization, which
6 has as its primary purpose the furnishing of legal services to indigent
7 persons, or by private counsel working on behalf of or under the
8 auspices of such society or organization, and, in the case of a counsel
9 assigned to an adult party, that the party continues to be indigent, the
10 party or child shall be presumed eligible for poor person relief pursu-
11 ant to this section.

12 S 2. Section 75-f of the domestic relations law, as added by chapter
13 386 of the laws of 2001, is amended to read as follows:

14 S 75-f. Priority. If a question of existence or exercise of jurisdic-
15 tion under this article is raised in a child custody proceeding, the
16 question, upon request of a party, child or [law guardian] CHILD'S
17 ATTORNEY must be given priority on the calendar and handled expeditious-
18 ly.

19 S 3. Subdivision 1 of section 76-f of the domestic relations law, as
20 added by chapter 386 of the laws of 2001, is amended to read as follows:

21 1. A court of this state which has jurisdiction under this article to
22 make a child custody determination may decline to exercise its jurisdic-
23 tion at any time if it determines that it is an inconvenient forum under
24 the circumstances and that a court of another state is a more appropri-
25 ate forum. The issue of inconvenient forum may be raised upon motion of
26 a party, the child or the [law guardian] CHILD'S ATTORNEY, or upon the
27 court's own motion, or request of another court.

28 S 4. Subdivisions 2 and 4 of section 112-b of the domestic relations
29 law, subdivision 2 as amended by chapter 437 of the laws of 2006 and
30 subdivision 4 as added by section 63 of part A of chapter 3 of the laws
31 of 2005, are amended to read as follows:

32 2. Agreements regarding communication or contact between an adoptive
33 child, adoptive parent or parents, and a birth parent or parents and/or
34 biological siblings or half-siblings of an adoptive child shall not be
35 legally enforceable unless the terms of the agreement are incorporated
36 into a written court order entered in accordance with the provisions of
37 this section. The court shall not incorporate an agreement regarding
38 communication or contact into an order unless the terms and conditions
39 of the agreement have been set forth in writing and consented to in
40 writing by the parties to the agreement, including the [law guardian]
41 ATTORNEY representing the adoptive child. The court shall not enter a
42 proposed order unless the court that approved the surrender of the child
43 determined and stated in its order that the communication with or
44 contact between the adoptive child, the prospective adoptive parent or
45 parents and a birth parent or parents and/or biological siblings or
46 half-siblings, as agreed upon and as set forth in the agreement, would
47 be in the adoptive child's best interests. Notwithstanding any other
48 provision of law, a copy of the order entered pursuant to this section
49 incorporating the post-adoption contact agreement shall be given to all
50 parties who have agreed to the terms and conditions of such order.

51 4. An order incorporating an agreement regarding communication or
52 contact entered under this section may be enforced by any party to the
53 agreement or the [law guardian] ATTORNEY FOR THE CHILD by filing a peti-
54 tion in the family court in the county where the adoption was approved.
55 Such petition shall have annexed to it a copy of the order approving the
56 agreement regarding communication or contact. The court shall not

1 enforce an order under this section unless it finds that the enforcement
2 is in the child's best interests.

3 S 5. Clauses (B) and (C) of subparagraph (ii) of paragraph (b) of
4 subdivision 3 of section 113 of the domestic relations law, as amended
5 by chapter 185 of the laws of 2006, are amended to read as follows:

6 (B) If the court determines that the child is under the jurisdiction
7 of a different family court, the court in which the adoption petition
8 was filed shall stay its proceeding for not more than thirty days and
9 shall communicate with the family court judge who exercised jurisdiction
10 over the most recent permanency or other proceeding involving the child.
11 The communication shall be recorded or summarized on the record by the
12 court in which the adoption petition was filed. Both courts shall notify
13 the parties and [law guardian] THE ATTORNEY FOR THE CHILD, if any, in
14 their respective proceedings and shall give them an opportunity to pres-
15 ent facts and legal argument or to participate in the communication
16 prior to the issuance of a decision on jurisdiction.

17 (C) The family court judge who exercised jurisdiction over the most
18 recent permanency or other proceeding involving the child shall deter-
19 mine whether he or she should assume or decline jurisdiction over the
20 adoption proceeding. In making its determination, the family court judge
21 shall consider, among other factors: the relative familiarity of each
22 court with the facts and circumstances regarding permanency planning
23 for, and the needs and best interests of, the child; the ability of the
24 [law guardian] ATTORNEY FOR THE CHILD to continue [to represent the
25 child] SUCH REPRESENTATION in the adoption proceeding, if appropriate;
26 the convenience of each court to the residence of the prospective adop-
27 tive parent or parents; and the relative ability of each court to hear
28 and determine the adoption petition expeditiously. The court in which
29 the adoption petition was filed shall issue an order incorporating this
30 determination of jurisdiction within thirty days of the filing of the
31 adoption petition.

32 S 6. Subparagraph (i) of paragraph (d) of subdivision 6 of section
33 115-b of the domestic relations law, as amended by chapter 817 of the
34 laws of 1986, is amended to read as follows:

35 (i) The court shall promptly notify, in writing, the parent, the adop-
36 tive parents, their respective attorneys, and the [law guardian] ATTOR-
37 NEY FOR THE CHILD appointed pursuant to section two hundred forty-nine
38 of the family court act or a guardian ad litem appointed pursuant to
39 section four hundred three-a of the surrogate's court procedure act,
40 that the court will, upon the date specified in such notice by the
41 court, or as soon thereafter as the parties may be heard pursuant to
42 this paragraph, hear and determine whether revocation of the consent of
43 the parent was timely and properly given and whether the adoptive
44 parent's notice of intent to oppose such revocation was timely and prop-
45 erly given and if necessary, hear and determine what disposition should
46 be made with respect to the custody of the child.

47 S 7. Paragraph (c) of subdivision 1-c of section 240 of the domestic
48 relations law, as amended by chapter 378 of the laws of 1999, is amended
49 to read as follows:

50 (c) For the purpose of making a determination pursuant to clause (C)
51 of subparagraph (i) of paragraph (b) of this subdivision, the court
52 shall not be bound by the findings of fact, conclusions of law or ulti-
53 mate conclusion as determined by the proceedings leading to the
54 conviction of murder in the first or second degree in this state or of
55 an offense in another jurisdiction which, if committed in this state,
56 would constitute murder in either the first or second degree, of a

parent, legal guardian, legal custodian, sibling, half-sibling or step-sibling of a child who is the subject of the proceeding. In all proceedings under this section, [a law guardian] AN ATTORNEY shall be appointed for the child.

S 8. Subdivision 1 of section 254 of the domestic relations law, as added by chapter 236 of the laws of 2001, is amended to read as follows:

1. Notwithstanding any other provision of law, in any proceeding for custody, divorce, separation or annulment, whether or not an order of protection or temporary order of protection is sought or has been sought in the past, the court may, upon its own motion or upon the motion of any party or the [law guardian] ATTORNEY FOR THE CHILD, authorize any party or the child to keep his or her address confidential from any adverse party or the child, as appropriate, in any pleadings or other papers submitted to the court, where the court finds that the disclosure of the address or other identifying information would pose an unreasonable risk to the health or safety of a party or the child. Pending such a finding, any address or other identifying information of the child or party seeking confidentiality shall be safeguarded and sealed in order to prevent its inadvertent or unauthorized use or disclosure.

S 9. Subdivision 6 of section 503 of the executive law, as amended by chapter 465 of the laws of 1992, is amended to read as follows:

6. The division shall be responsible for bringing violations of law pertaining to detention of juveniles to the attention of each appropriate [law guardian] ATTORNEY FOR THE CHILD or counsel for the defendant who may petition for habeas corpus for persons aggrieved thereby.

S 10. Subdivision 4 of section 508 of the executive law, as added by chapter 481 of the laws of 1978 and such section as renumbered by chapter 465 of the laws of 1992, is amended to read as follows:

4. The division for youth may apply to the sentencing court for permission to transfer a youth not less than sixteen nor more than eighteen years of age to the department of correctional services. Such application shall be made upon notice to the youth, who shall be entitled to be heard upon the application and to be represented by counsel [or law guardian]. The court shall grant the application if it is satisfied that there is no substantial likelihood that the youth will benefit from the programs offered by the division facilities.

S 11. Subdivision 7 of section 35 of the judiciary law, as added by chapter 571 of the laws of 1989, is amended to read as follows:

7. Whenever the supreme court or a surrogate's court shall appoint counsel in a proceeding over which the family court might have exercised jurisdiction had such action or proceeding been commenced in family court or referred thereto pursuant to law, and under circumstances whereby, if such proceeding were pending in family court, such court would be authorized by section two hundred forty-nine of the family court act to appoint [a law guardian] AN ATTORNEY FOR THE CHILD, such counsel shall be compensated in accordance with the provisions of this section.

S 12. Paragraph (b) of subdivision 1 of section 35-a of the judiciary law, as amended by chapter 834 of the laws of 1975, is amended to read as follows:

(b) Paragraph (a) shall not apply to any compensation awarded to appointees assigned to represent indigent persons pursuant to Article 18-B of the county law, counsel assigned pursuant to section thirty-five of the judiciary law[, law guardians] or counsel appointed pursuant to the family court act[, or referees appointed pursuant to section 78.25 of the mental hygiene law].

1 S 13. Subdivision (c) of section 154 of the family court act, as added
2 by chapter 441 of the laws of 1995, is amended to read as follows:

3 (c) In a proceeding arising under article four, five, six, eight or
4 ten of this act in which an order of protection is sought or in which a
5 violation of an order of protection is alleged, the court may send proc-
6 ess without the state in the same manner and with the same effect as
7 process sent within the state in the exercise of personal jurisdiction
8 over any person, subject to the jurisdiction of the court under section
9 three hundred one or three hundred two of the civil practice law and
10 rules, notwithstanding that such person is not a resident or domiciliary
11 of the state, so long as: (1) the act or acts giving rise to the appli-
12 cation for issuance or enforcement of the order of protection occurred
13 within the state; and (2) the applicant for the order of protection
14 resides or is domiciled in the state or has substantial contacts in the
15 state, including but not limited to, presence on a regular basis in the
16 state. Upon good cause shown, the court may issue a temporary order of
17 protection in accordance with article four, five, six, eight or ten of
18 this act. Where personal jurisdiction over a non-resident or non-domi-
19 liary respondent would not be obtainable but for this subdivision, the
20 papers to be served shall include a conspicuous notice that the exercise
21 of such jurisdiction is limited to the issue of the order of protection.
22 Where service of a petition and summons upon a non-resident or non-domi-
23 ciliary respondent is required, such service shall be made at least
24 twenty days before the return date. Where service is effected on an
25 out-of-state respondent and the respondent defaults by failing to
26 appear, the court may on its own motion, or upon application of any
27 party or the [law guardian] ATTORNEY FOR THE CHILD, proceed to a hearing
28 with respect to issuance or enforcement of the order of protection.
29 Nothing in this section shall be construed to affect or alter the exer-
30 cise of personal jurisdiction with respect to issues other than the
31 order of protection.

32 S 14. Paragraph (a) of subdivision 2 of section 154-b of the family
33 court act, as amended by chapter 236 of the laws of 2001, is amended to
34 read as follows:

35 (a) Notwithstanding any other provision of law, in any proceeding
36 under article four, five, five-b, six, eight or ten of this act, whether
37 or not an order of protection or temporary order of protection is sought
38 or has been sought in the past, the court may, upon its own motion or
39 upon the motion of any party or the [law guardian] CHILD'S ATTORNEY,
40 authorize any party or the child to keep his or her address confidential
41 from any adverse party or the child, as appropriate, in any pleadings or
42 other papers submitted to the court, where the court finds that disclo-
43 sure of such address or other identifying information would pose an
44 unreasonable risk to the health or safety of a party or the child. Pend-
45 ing such a finding, any address or other identifying information of the
46 child or party seeking confidentiality shall be safeguarded and sealed
47 in order to prevent its inadvertent or unauthorized use or disclosure.

48 S 15. Subdivision 2 of section 154-c of the family court act, as added
49 by chapter 186 of the laws of 1997, is amended to read as follows:

50 2. Modifications of orders of protection. Except as provided in subdi-
51 vision two of section one hundred fifty-four-d of this act, any motion
52 to vacate or modify any order of protection or temporary order of
53 protection issued under this act shall be on notice to the non-moving
54 party and the [law guardian] CHILD'S ATTORNEY, if any.

1 S 16. The article heading and the part heading of part 4 of article 2
2 and section 241 of the family court act, section 241 as amended by chap-
3 ter 476 of the laws of 1988, are amended to read as follows:

4 ADMINISTRATION, MEDICAL EXAMINATIONS, [LAW GUARDIANS]
5 ATTORNEYS FOR CHILDREN,
6 AUXILIARY SERVICES

7 [Law guardians] ATTORNEYS FOR CHILDREN

8 S 241. Findings and purpose. This act declares that minors who are the
9 subject of family court proceedings or appeals in proceedings originat-
10 ing in the family court should be represented by counsel of their own
11 choosing or by [law guardians] ASSIGNED COUNSEL. This declaration is
12 based on a finding that counsel is often indispensable to a practical
13 realization of due process of law and may be helpful in making reasoned
14 determinations of fact and proper orders of disposition. This part
15 establishes a system of [law guardians] ATTORNEYS for [minors] CHILDREN
16 who often require the assistance of counsel to help protect their inter-
17 ests and to help them express their wishes to the court. Nothing in this
18 act is intended to preclude any other interested person from appearing
19 by counsel.

20 S 17. Section 242 of the family court act, as amended by chapter 962
21 of the laws of 1970, is amended to read as follows:

22 S 242. [Law guardian] ATTORNEY FOR THE CHILD. As used in this act,
23 "[law guardian] ATTORNEY FOR THE CHILD" refers to an attorney admitted
24 to practice law in the state of New York and designated under this part
25 to represent minors pursuant to section two hundred [and] forty-nine of
26 this act.

27 S 18. Section 243 of the family court act, as amended by chapter 443
28 of the laws of 1995, is amended to read as follows:

29 S 243. Designation. (a) The office of court administration may enter
30 into an agreement with a legal aid society for the society to provide
31 [law guardians for] ATTORNEYS TO REPRESENT CHILDREN IN the family court
32 or appeals in proceedings originating in the family court in a county
33 having a legal aid society.

34 (b) The appellate division of the supreme court for the judicial
35 department in which a county is located may, upon determining that a
36 county panel designated pursuant to subdivision (c) of this section is
37 not sufficient to afford appropriate [law guardian services] SERVICES OF
38 ATTORNEYS FOR CHILDREN, enter into an agreement, subject to regulations
39 as may be promulgated by the administrative board of the courts, with
40 any qualified attorney or attorneys to serve as [law guardian or as law
41 guardians] ATTORNEYS FOR CHILDREN for the family court or appeals in
42 proceedings originating in the family court in that county.

43 (c) The appellate division of the supreme court for the judicial
44 department in which a county is located may designate a panel of [law
45 guardians] ATTORNEYS FOR CHILDREN for the family court and appeals in
46 proceedings originating in the family court in that county, subject to
47 the approval of the administrative board of the courts. For this
48 purpose, [it] SUCH APPELLATE DIVISION may invite a bar association to
49 recommend qualified persons for consideration by the [said] appellate
50 division in making its designation, subject to standards as may be
51 promulgated by such administrative board.

52 S 19. Subdivision (b) of section 244 of the family court act, as
53 added by chapter 833 of the laws of 1974, is amended to read as follows:

54 (b) No designations pursuant to subdivision (c) of [such] section two
55 hundred forty-three may be for a term of more than one year, but succes-
56 sive designations may be made. The appellate division proceeding pursu-

ant to [such] subdivision (c) OF SECTION TWO HUNDRED FORTY-THREE, may at any time increase or decrease the number of [law guardians] ATTORNEYS FOR CHILDREN designated in any county and may rescind any designation at any time, subject to the approval of the office of court administration.

S 20. Section 245 of the family court act, as amended by chapter 443 of the laws of 1995, is amended to read as follows:

S 245. Compensation. (a) If the office of court administration proceeds pursuant to subdivision (a) of section two hundred forty-three of this chapter, the agreement shall provide that the society shall be reimbursed on a cost basis for services rendered under the agreement. The agreement shall contain a general plan for the organization and operation of the [providing] PROGRAM FOR THE PROVISION of [law guardians] ATTORNEYS FOR CHILDREN by the respective legal aid society, approved by the [said] administrative board, and the office of court administration may require such reports as it deems necessary from the society.

(b) If an appellate division proceeds pursuant to subdivision (b) of such section two hundred forty-three, the agreement may provide that the attorney or attorneys shall be reimbursed on a cost basis for services rendered under the agreement. The agreement shall contain a general plan for the organization and operation of the [providing] PROGRAM FOR THE PROVISION of [law guardians] ATTORNEYS FOR CHILDREN by the respective attorney or attorneys, and the appellate division may require such reports as it deems necessary from the attorney or attorneys.

(c) If an appellate division proceeds pursuant to subdivision (c) of such section two hundred forty-three, [law guardians] ATTORNEYS FOR CHILDREN shall be compensated and allowed expenses and disbursements in the same amounts established by subdivision three of section thirty-five of the judiciary law.

S 21. Section 248 of the family court act, as amended by chapter 833 of the laws of 1974, is amended to read as follows:

S 248. Appropriations. The costs of [law guardians] ATTORNEYS FOR CHILDREN under section two hundred forty-five shall be payable by the state of New York within the amounts appropriated therefor.

S 22. Section 249 of the family court act, as amended by chapter 76 of the laws of 2002, subdivision (a) as amended by section 2 of part A of chapter 3 of the laws of 2005, is amended to read as follows:

S 249. Appointment of [law guardian] ATTORNEY FOR CHILD. (a) In a proceeding under article three, seven, ten or ten-A of this act or where a revocation of an adoption consent is opposed under section one hundred fifteen-b of the domestic relations law or in any proceeding under section three hundred fifty-eight-a, three hundred eighty-three-c, three hundred eighty-four or three hundred eighty-four-b of the social services law or when a minor is sought to be placed in protective custody under section one hundred fifty-eight of this act, the family court shall appoint [a law guardian] AN ATTORNEY to represent a minor who is the subject of the proceeding or who is sought to be placed in protective custody, if independent legal representation is not available to such minor. In any proceeding to extend or continue the placement of a juvenile delinquent or person in need of supervision pursuant to section seven hundred fifty-six or 353.3 of this act or any proceeding to extend or continue a commitment to the custody of the commissioner of mental health or the commissioner of mental retardation and developmental disabilities pursuant to section 322.2 of this act, the court shall not permit the respondent to waive the right to be represented by counsel chosen by the respondent, respondent's parent, or other person legally

1 responsible for the respondent's care, or by [a law guardian] ASSIGNED
2 COUNSEL. In any other proceeding in which the court has jurisdiction,
3 the court may appoint [a law guardian] AN ATTORNEY to represent the
4 child, when, in the opinion of the family court judge, such represen-
5 tation will serve the purposes of this act, if independent legal counsel
6 is not available to the child. The family court on its own motion may
7 make such appointment.

8 (b) In making an appointment of [a law guardian] AN ATTORNEY FOR A
9 CHILD pursuant to this section, the court shall, to the extent practica-
10 ble and appropriate, appoint the same [law guardian] ATTORNEY who has
11 previously represented the child. Notwithstanding any other provision
12 of law, in a proceeding under article three OF THIS ACT following an
13 order of removal made pursuant to article seven hundred twenty-five of
14 the criminal procedure law, the court shall, wherever practicable,
15 appoint the SAME counsel [representing] WHO REPRESENTED the juvenile
16 offender in the criminal proceedings [as law guardian].

17 S 23. Section 249-a of the family court act, as added by chapter 513
18 of the laws of 1978, is amended to read as follows:

19 S 249-a. Waiver of counsel. A minor who is a subject of a juvenile
20 delinquency or person in need of supervision proceeding shall be
21 presumed to lack the requisite knowledge and maturity to waive the
22 appointment of [a law guardian] AN ATTORNEY. This presumption may be
23 rebutted only after [a law guardian] AN ATTORNEY has been appointed and
24 the court determines after a hearing at which the [law guardian] ATTOR-
25 NEY appears and participates and upon clear and convincing evidence that
26 (a) the minor understands the nature of the charges, the possible dispo-
27 sitional alternatives and the possible defenses to the charges, (b) the
28 minor possesses the maturity, knowledge and intelligence necessary to
29 conduct his OR HER own defense, and (c) waiver is in the best interest
30 of the minor.

31 S 24. Paragraph 1 of subdivision (a) of section 249-b of the family
32 court act, as amended by chapter 476 of the laws of 2009, is amended to
33 read as follows:

34 1. prescribe workload standards for attorneys for children, including
35 maximum numbers of children who can be represented at any given time, in
36 order to ensure that children receive effective assistance of counsel
37 comporting with legal and ethical mandates, the complexity of the
38 proceedings affecting each client to which the [law guardian] ATTORNEY
39 is assigned, and the nature of the court appearance likely to be
40 required for each individual client; and

41 S 25. Subdivision (b) of section 251 of the family court act, as
42 amended by chapter 296 of the laws of 1993, is amended to read as
43 follows:

44 (b) Except for examinations conducted pursuant to section 322.1 of
45 this act where the family court determines that an inpatient examination
46 is necessary, or those ordered after a fact-finding hearing has been
47 completed under article three or seven of this act and the court deter-
48 mines according to the criteria in subdivision three of section 320.5 or
49 subdivision (a) of section seven hundred thirty-nine of this act that
50 the child should be detained pending disposition, or unless otherwise
51 consented to by the adult to be examined or by the [law guardian] ATTOR-
52 NEY representing the respondent, all examinations pursuant to this
53 section shall be conducted on an outpatient basis. An order for remand
54 after a fact-finding hearing under article three or seven of this act
55 shall include findings on the record supporting the need for examination
56 in a residential facility and a determination that it is the most appro-

1 puate facility. Remands for examinations shall be for a period deter-
2 mined by the facility, which shall not exceed thirty days, except that,
3 upon motion by the person detained on its own motion, the court may, for
4 good cause shown, terminate the remand at any time.

5 S 26. Subdivision 2 of section 301.2 of the family court act, as added
6 by chapter 920 of the laws of 1982, is amended to read as follows:

7 2. "Respondent" means the person against whom a juvenile delinquency
8 petition is filed pursuant to section 310.1. Provided, however, that any
9 act of the respondent required or authorized under this article may be
10 performed by his OR HER attorney [or law guardian] unless expressly
11 provided otherwise.

12 S 27. Subdivision 3 of section 306.2 of the family court act, as added
13 by chapter 920 of the laws of 1982, is amended to read as follows:

14 3. Upon receipt of a report of the division of criminal justice
15 services pursuant to this section, the recipient office or agency must
16 promptly transmit two copies of such report to the family court in which
17 the proceeding may be originated and two copies thereof to the present-
18 ment agency who shall furnish a copy thereof to counsel for the respond-
19 ent [or to the respondent's law guardian].

20 S 28. Subdivision 2 of section 307.4 of the family court act, as added
21 by chapter 920 of the laws of 1982, is amended to read as follows:

22 2. At such hearing the court must appoint [a law guardian] AN ATTORNEY
23 to represent the child pursuant to the provisions of section two hundred
24 forty-nine if independent legal representation is not available to such
25 child.

26 S 29. Subdivisions 2, 3 and 4 of section 320.2 of the family court
27 act, subdivisions 2 and 3 as added by chapter 920 of the laws of 1982
28 and subdivision 4 as amended by chapter 663 of the laws of 1985, are
29 amended to read as follows:

30 2. At the initial appearance the court must appoint [a law guardian]
31 AN ATTORNEY to represent the respondent pursuant to the provisions of
32 section two hundred forty-nine if independent legal representation is
33 not available to such respondent.

34 3. The initial appearance may be adjourned for no longer than seven-
35 ty-two hours or until the next court day, whichever is sooner, to enable
36 an [appointed law guardian or other counsel] ATTORNEY FOR THE RESPONDENT
37 to appear before the court.

38 4. The clerk of the court shall notify the presentment agency and any
39 [appointed law guardian] ATTORNEY FOR THE RESPONDENT of the initial
40 appearance date.

41 S 30. Section 320.3 of the family court act, as added by chapter 920
42 of the laws of 1982, is amended to read as follows:

43 S 320.3. Notice of rights. At the time the respondent first appears
44 before the court, the respondent and his OR HER parent or other person
45 legally responsible for his OR HER care shall be advised of the respond-
46 ent's right to remain silent and of his OR HER right to be represented
47 by counsel chosen by him OR HER or by [a law guardian] AN ATTORNEY
48 assigned by the court. Provided, however, that in the event of the fail-
49 ure of the respondent's parent or other person legally responsible for
50 his care to appear, after reasonable and substantial effort has been
51 made to notify such parent or responsible person of the commencement of
52 the proceeding and such initial appearance, the court shall appoint [a
53 law guardian] AN ATTORNEY for the respondent.

54 S 31. Subdivision 1 of section 320.4 of the family court act, as added
55 by chapter 920 of the laws of 1982, is amended to read as follows:

1 1. At the initial appearance the court must inform the respondent, or
2 cause him to be informed in its presence, of the charge or charges
3 contained in the petition, and the presentment agency must cause the
4 respondent and his OR HER counsel [or law guardian] to be furnished with
5 a copy of the petition.

6 S 32. Subdivision 1 and paragraphs (a) and (d) of subdivision 5 of
7 section 322.2 of the family court act, subdivision 1 as added by chapter
8 920 of the laws of 1982, paragraphs (a) and (d) of subdivision 5 as
9 amended by chapter 789 of the laws of 1985, are amended to read as
10 follows:

11 1. Upon the receipt of examination reports ordered under section
12 322.1, the court shall conduct a hearing to determine whether the
13 respondent is an incapacitated person. The respondent, the counsel [or
14 law guardian] for the respondent, the presentment agency and the commis-
15 sioner of mental health or the commissioner of mental retardation and
16 developmental disabilities, as appropriate, shall be notified of such
17 hearing at least five days prior to the date thereof and afforded an
18 opportunity to be heard.

19 (a) If the court finds that there is probable cause to believe that
20 the respondent committed a felony, it shall order the respondent commit-
21 ted to the custody of the commissioner of mental health or the commis-
22 sioner of mental retardation and developmental disabilities for an
23 initial period not to exceed one year from the date of such order. Such
24 period may be extended annually upon further application to the court by
25 the commissioner having custody or his OR HER designee. Such application
26 must be made not more than sixty days prior to the expiration of such
27 period on forms that have been prescribed by the chief administrator of
28 the courts. At that time, the commissioner must give written notice of
29 the application to the respondent, the counsel [or law guardian] repres-
30 enting the respondent and the mental hygiene legal service if the
31 respondent is at a residential facility. Upon receipt of such applica-
32 tion, the court must conduct a hearing to determine the issue of capaci-
33 ty. If, at the conclusion of a hearing conducted pursuant to this subdivi-
34 sion, the court finds that the respondent is no longer incapacitated,
35 he OR SHE shall be returned to the family court for further proceedings
36 pursuant to this article. If the court is satisfied that the respondent
37 continues to be incapacitated, the court shall authorize continued
38 custody of the respondent by the commissioner for a period not to exceed
39 one year. Such extensions shall not continue beyond a reasonable period
40 of time necessary to determine whether the respondent will attain the
41 capacity to proceed to a fact finding hearing in the foreseeable future
42 but in no event shall continue beyond the respondent's eighteenth birth-
43 day.

44 (d) The commissioner shall review the condition of the respondent
45 within forty-five days after the respondent is committed to the custody
46 of the commissioner. He OR SHE shall make a second review within ninety
47 days after the respondent is committed to his OR HER custody. Thereaft-
48 er, he OR SHE shall review the condition of the respondent every ninety
49 days. The respondent and the counsel [or law guardian] for the respond-
50 ent, shall be notified of any such review and afforded an opportunity to
51 be heard. The commissioner having custody shall apply to the court for
52 an order dismissing the petition whenever he OR SHE determines that
53 there is a substantial probability that the respondent will continue to
54 be incapacitated for the foreseeable future. At the time of such appli-
55 cation the commissioner must give written notice of THE application to
56 the respondent, the presentment agency and the mental hygiene legal

1 service if the respondent is at a residential facility. Upon receipt of
2 such application, the court may on its own motion conduct a hearing to
3 determine whether there is substantial probability that the respondent
4 will continue to be incapacitated for the foreseeable future, and it
5 must conduct such hearing if a demand therefor is made by the respondent
6 or the mental hygiene legal service within ten days from the date that
7 notice of THE application was given to them. The respondent may apply to
8 the court for an order of dismissal on the same ground.

9 S 33. Subdivisions 2 and 3 and paragraph (b) of subdivision 7 of
10 section 330.1 of the family court act, as added by chapter 398 of the
11 laws of 1983, are amended to read as follows:

12 2. Bill of particulars upon request. Upon a timely request for a bill
13 of particulars by a respondent against whom a petition is pending, the
14 presentment agency shall within fifteen days of the service of the
15 request or as soon thereafter as is practicable, serve upon the respond-
16 ent or his OR HER attorney [or law guardian] and file with the court,
17 the bill of particulars, except to the extent the presentment agency
18 shall have refused to comply with the request pursuant to subdivision
19 four of this section. If the respondent is detained, the court shall
20 direct the filing of the bill of particulars on an expedited basis and
21 prior to the commencement of the fact-finding hearing.

22 3. Timeliness of request. A request for a bill of particulars shall be
23 timely if made within thirty days after the conclusion of the initial
24 appearance and before commencement of the fact-finding hearing. If the
25 respondent is not represented by counsel [or a law guardian], and has
26 requested an adjournment to retain counsel or to have [a law guardian]
27 COUNSEL appointed, the thirty-day period shall commence, for the
28 purposes of a request for a bill of particulars by the respondent, on
29 the date counsel [or a law guardian] initially appeared on respondent's
30 behalf. However, the court may direct compliance with a request for a
31 bill of particulars that, for good cause shown, could not have been made
32 within the time specified.

33 (b) An order limiting, conditioning, delaying or regulating the bill
34 of particulars may, among other things, require that any material copied
35 or derived therefrom be maintained in the exclusive possession of the
36 attorney [or law guardian] for the respondent and be used for the exclu-
37 sive purpose of preparing for the defense of the juvenile delinquency
38 proceeding.

39 S 34. Subdivision 2 of section 331.1 of the family court act, as added
40 by chapter 920 of the laws of 1982, is amended to read as follows:

41 2. "Attorneys' work product" means property to the extent that it
42 contains the opinions, theories or conclusions of the presentment agen-
43 cy[, law guardian], counsel for the respondent or members of their
44 staffs.

45 S 35. Subdivision 1 of section 332.2 of the family court act, as
46 amended by chapter 398 of the laws of 1983, is amended to read as
47 follows:

48 1. Except as otherwise expressly provided in this article, all pre-
49 trial motions shall be filed within thirty days after the conclusion of
50 the initial appearance and before commencement of the fact-finding hear-
51 ing, or within such additional times as the court may fix upon applica-
52 tion of the respondent made prior to entering a finding pursuant to
53 section 345.1. If the respondent is not represented by counsel [or a law
54 guardian] and has requested an adjournment to retain counsel or to have
55 [a law guardian] COUNSEL appointed, such thirty-day period shall
56 commence on the date counsel [or a law guardian] initially appears on

1 the respondent's behalf. A motion made pursuant to subdivision eight of
2 section 332.1 must be made prior to the commencement of a fact-finding
3 hearing or the entry of an admission.

4 S 36. Section 341.2 of the family court act, as added by chapter 920
5 of the laws of 1982, is amended to read as follows:

6 S 341.2. Presence of respondent and his OR HER parent. 1. The respond-
7 ent and his OR HER counsel [or law guardian] shall be personally present
8 at any hearing under this article and at the initial appearance.

9 2. If a respondent conducts himself OR HERSELF in so disorderly and
10 disruptive a manner that the hearing cannot be carried on with [him] THE
11 RESPONDENT in the courtroom, the court may order a recess for the
12 purpose of enabling [his] THE RESPONDENT'S parent or other person
13 responsible for his OR HER care and [his law guardian or] THE RESPOND-
14 ENT'S counsel to exercise full efforts to assist the respondent to
15 conduct himself OR HERSELF so as to permit the proceedings to resume in
16 an orderly manner. If such efforts fail, the respondent may be removed
17 from the courtroom if, after he OR SHE is warned by the court that he OR
18 SHE will be removed, he OR SHE continues such disorderly and disruptive
19 conduct. Such time shall not extend beyond the minimum period necessary
20 to restore order.

21 3. The respondent's parent or other person responsible for his OR HER
22 care shall be present at any hearing under this article and at the
23 initial appearance. However, the court shall not be prevented from
24 proceeding by the absence of such parent or person if reasonable and
25 substantial effort has been made to notify such parent or other person
26 and if the respondent and his [law guardian] or HER counsel are present.

27 S 37. Subdivision 4 and the opening paragraph of subdivision 7 of
28 section 353.3 of the family court act, subdivision 4 as amended by chap-
29 ter 465 of the laws of 1992, the opening paragraph of subdivision 7 as
30 amended by chapter 181 of the laws of 2000, are amended to read as
31 follows:

32 4. Where the respondent is placed with the division for youth, the
33 court may direct the division to place the respondent with an authorized
34 agency or class of authorized agencies and in the event the division is
35 unable to so place the respondent or, discontinues the placement with
36 the authorized agency, the respondent shall be deemed to have been
37 placed with the division pursuant to paragraph (b) or (c) of subdivision
38 three of this section. In such cases, the division shall notify the
39 court, presentment agency, [law guardian] RESPONDENT'S ATTORNEY and
40 parent or other person responsible for the respondent's care, of the
41 reason for discontinuing the placement with the authorized agency and
42 the level and location of the youth's placement.

43 The place in which or the person with whom the respondent has been
44 placed under this section shall submit a report to the court, [law guar-
45 dian or] RESPONDENT'S attorney of record, and presentment agency at the
46 conclusion of the placement period, except as provided in paragraphs (a)
47 and (b) of this subdivision. Such report shall include recommendations
48 and such supporting data as is appropriate. The court may extend a
49 placement pursuant to section 355.3 of this article.

50 S 38. Section 354.2 of the family court act, as added by chapter 920
51 of the laws of 1982, is amended to read as follows:

52 S 354.2. Duties of counsel [or law guardian]. 1. If the court has
53 entered a dispositional order pursuant to section 352.2, it shall be the
54 duty of the respondent's counsel [or law guardian] to promptly advise
55 such respondent and his OR HER parent or other person responsible for
56 his OR HER care in writing of [his] THE right to appeal to the appropri-

ate appellate division of the supreme court, the time limitations involved, the manner of instituting an [appeal] APPEAL and obtaining a transcript of the testimony and the right to apply for leave to appeal as a poor person if he OR SHE is unable to pay the cost of an appeal. It shall be the further duty of such counsel [or law guardian] to explain to the respondent and his OR HER parent or person responsible for his OR HER care the procedures for instituting an appeal, the possible reasons upon which an appeal may be based and the nature and possible consequences of the appellate process.

2. It shall also be the duty of such counsel [or law guardian] to ascertain whether the respondent wishes to appeal and, if so, to serve and file the necessary notice of appeal.

3. If the respondent has been permitted to waive the appointment of [a law guardian] COUNSEL pursuant to section two hundred forty-nine-a, it shall be the duty of the court to provide the notice and explanation pursuant to subdivision one and, if the respondent indicates that he OR SHE wishes to appeal, the clerk of the court shall file and serve the notice of appeal.

S 39. Subdivision 3 of section 365.3 of the family court act, as added by chapter 920 of the laws of 1982, is amended to read as follows:

3. If the presentment agency is the appellant, it must serve a copy of such notice of appeal upon the respondent and upon the attorney [or law guardian] who last appeared for him OR HER in the family court.

S 40. Subdivision 1 of section 375.1 of the family court act, as amended by chapter 645 of the laws of 1996, is amended to read as follows:

1. Upon termination of a delinquency proceeding against a respondent in favor of such respondent, unless the presentment agency upon written motion with not less than eight days notice to such respondent demonstrates to the satisfaction of the court that the interests of justice require otherwise or the court on its own motion with not less than eight days notice to such respondent determines that the interest of justice require otherwise and states the reason for such determination on the record, the clerk of the court shall immediately notify the [law guardian or] counsel for the child, the director of the appropriate presentment agency, and the heads of the appropriate probation department and police department or other law enforcement agency, that the proceeding has terminated in favor of the respondent and, unless the court has directed otherwise, that the records of such action or proceeding, other than those destroyed pursuant to section 354.1 of this act, shall be sealed. Upon receipt of such notification all official records and papers, including judgments and orders of the court, but not including public court decisions or opinions or records and briefs on appeal, relating to the arrest, the prosecution and the probation service proceedings, including all duplicates or copies thereof, on file with the court, police agency, probation service and presentment agency shall be sealed and not made available to any person or public or private agency. Such records shall remain sealed during the pendency of any motion made pursuant to this subdivision.

S 41. Subdivision (c) of section 435 of the family court act, as amended by chapter 81 of the laws of 2003, is amended to read as follows:

(c) Reports prepared by the probation service for use by the court at any time prior to the making of an order of disposition shall be deemed confidential information furnished to the court which the court in a proper case may, in its discretion, withhold from or disclose in whole

1 or in part to the support magistrate, [law guardian] CHILD'S ATTORNEY,
2 counsel, party in interest, or other appropriate person. Such reports
3 may not be made available to the court prior to a determination that the
4 respondent is liable under this article for the support of the petition-
5 er.

6 S 42. Subdivision (b) of section 625 of the family court act, as
7 amended by chapter 666 of the laws of 1976, is amended to read as
8 follows:

9 (b) Reports prepared by the probation service or a duly authorized
10 agency for use by the court prior to the making of an order of disposi-
11 tion shall be deemed confidential information furnished to the court
12 which the court in a proper case may, in its discretion, withhold from
13 or disclose in whole or in part to the [law guardian] CHILD'S ATTORNEY,
14 counsel, party in interest, or other appropriate person. Such reports
15 may not be furnished to the court prior to the completion of a fact-
16 finding hearing, but may be used in a dispositional hearing or in the
17 making of an order of disposition without a dispositional hearing pursu-
18 ant to subdivision (a) of this section.

19 S 43. Subdivision (d) of section 633 of the family court act, as added
20 by section 7 of part A of chapter 3 of the laws of 2005, is amended to
21 read as follows:

22 (d) Not later than sixty days before the expiration of the period of
23 suspended judgment, the petitioner shall file a report with the family
24 court and all parties, including the respondent and his or her attorney,
25 the [law guardian] CHILD'S ATTORNEY and intervenors, if any, regarding
26 the respondent's compliance with the terms of suspended judgment. The
27 report shall be reviewed by the court on the scheduled court date.
28 Unless a motion or order to show cause has been filed prior to the expi-
29 ration of the period of suspended judgment alleging a violation or seek-
30 ing an extension of the period of the suspended judgment, the terms of
31 the disposition of suspended judgment shall be deemed satisfied and an
32 order committing the guardianship and custody of the child shall not be
33 entered.

34 S 44. Subdivision (d) of section 651 of the family court act, as
35 amended by chapter 657 of the laws of 2003, is amended to read as
36 follows:

37 (d) With respect to applications by a grandparent or grandparents for
38 visitation or custody rights, made pursuant to section seventy-two or
39 two hundred forty of the domestic relations law, with a child remanded
40 or placed in the care of a person, official, agency or institution
41 pursuant to the provisions of article ten of this act, the applicant, in
42 such manner as the court shall prescribe, shall serve a copy of the
43 application upon the social services official having care and custody of
44 such child, and the child's [law guardian] ATTORNEY, who shall be
45 afforded an opportunity to be heard thereon.

46 S 45. Subdivision (a) of section 728 of the family court act is
47 amended to read as follows:

48 (a) If a child in custody is brought before a judge of the family
49 court before a petition is filed, the judge shall hold a hearing for the
50 purpose of making a preliminary determination of whether the court
51 appears to have jurisdiction over the child. At the commencement of the
52 hearing, the judge shall advise the child of his OR HER right to remain
53 silent, his OR HER right to be represented by counsel of his OR HER own
54 choosing, and of [his] THE right to have [a law guardian] AN ATTORNEY
55 assigned in accord with part four of article two of this act. [He] THE
56 JUDGE must also allow the child a reasonable time to send for his OR HER

1 parents or other person OR PERSONS legally responsible for his OR HER
2 care, and for counsel, and adjourn the hearing for that purpose.

3 S 46. Subdivisions (a) and (c) of section 741 of the family court act,
4 subdivision (a) as amended and subdivision (c) as added by chapter 837
5 of the laws of 1975, are amended to read as follows:

6 (a) At the initial appearance of a respondent in a proceeding and at
7 the commencement of any hearing under this article, the respondent and
8 his OR HER parent or other person legally responsible for his OR HER
9 care shall be advised of the respondent's right to remain silent and of
10 [his] THE RESPONDENT'S right to be represented by counsel chosen by him
11 OR HER or his OR HER parent or other person legally responsible for his
12 OR HER care, or by [a law guardian] AN ATTORNEY assigned by the court
13 under part four of article two. Provided, however, that in the event of
14 the failure of the respondent's parent or other person legally responsi-
15 ble for his OR HER care to appear, after reasonable and substantial
16 effort has been made to notify such parent or responsible person of the
17 commencement of the proceeding and such initial appearance, the court
18 shall appoint [a law guardian] AN ATTORNEY FOR THE RESPONDENT and shall,
19 unless inappropriate also appoint a guardian ad litem for such respond-
20 ent, and in such event, shall inform the respondent of such rights in
21 the presence of such [law guardian] ATTORNEY and any guardian ad litem.

22 (c) At any hearing under this article, the court shall not be
23 prevented from proceeding by the absence of the respondent's parent or
24 other person responsible for his OR HER care if reasonable and substan-
25 tial effort has been made to notify such parent or responsible person of
26 the occurrence of the hearing and if the respondent and his [law guardi-
27 an] OR HER ATTORNEY are present. The court shall, unless inappropriate,
28 also appoint a guardian ad litem who shall be present at such hearing
29 and any subsequent hearing.

30 S 47. Subdivision 2 of section 750 of the family court act, as amended
31 by chapter 106 of the laws of 1987, is amended to read as follows:

32 2. After the completion of the fact-finding hearing and the making of
33 the required findings and prior to the dispositional hearing, the
34 reports or memoranda prepared or obtained by the probation service and
35 furnished to the court shall be made available by the court for examina-
36 tion and copying by the child's [law guardian or] counsel or by the
37 respondent if he OR SHE is not represented by [a law guardian or other]
38 counsel. All diagnostic assessments and probation investigation reports
39 shall be submitted to the court at least five court days prior to the
40 commencement of the dispositional hearing. In its discretion the court
41 may except from disclosure a part or parts of the reports or memoranda
42 which are not relevant to a proper disposition, or sources of informa-
43 tion which have been obtained on a promise of confidentiality, or any
44 other portion thereof, disclosure of which would not be in the interest
45 of justice. In all cases where a part or parts of the reports or memo-
46 randa are not disclosed, the court shall state for the record that a
47 part or parts of the reports or memoranda have been excepted and the
48 reasons for its action. The action of the court excepting information
49 from disclosure shall be subject to review on any appeal from the order
50 of disposition. If such reports or memoranda are made available to THE
51 respondent or his [law guardian] or HER counsel, they shall also be made
52 available to the counsel presenting the petition pursuant to section two
53 hundred fifty-four and, in the court's discretion, to any other attorney
54 representing the petitioner.

55 S 48. Section 760 of the family court act, as added by chapter 9 of
56 the laws of 1989, is amended to read as follows:

1 S 760. Duties of counsel [or law guardian]. 1. If the court has
2 entered a dispositional order pursuant to section seven hundred fifty-
3 four, it shall be the duty of the respondent's counsel [or law guardian]
4 to promptly advise such respondent and if his OR HER parent or other
5 person responsible for his OR HER care is not the petitioner, such
6 parent or other person responsible for his OR HER care, in writing of
7 [his] THE right to appeal to the appropriate appellate division of the
8 supreme court, the time limitations involved, the manner of instituting
9 an appeal and obtaining a transcript of the testimony and the right to
10 apply for leave to appeal as a poor person if he OR SHE is unable to pay
11 the cost of an appeal. It shall be the further duty of such counsel [or
12 law guardian] to explain to the respondent and if his OR HER parent or
13 other person responsible for his OR HER care is not the petitioner, such
14 parent or person responsible for his OR HER care, the procedures for
15 instituting an appeal, the possible reasons upon which an appeal may be
16 based and the nature and possible consequences of the appellate process.

17 2. It shall also be the duty of such counsel [or law guardian] to
18 ascertain whether the respondent wishes to appeal and, if so, to serve
19 and file the necessary notice of appeal.

20 3. If the respondent has been permitted to waive the appointment of [a
21 law guardian] COUNSEL pursuant to section two hundred forty-nine-a, it
22 shall be the duty of the court to provide the notice and explanation
23 pursuant to subdivision one and, if the respondent indicates that he OR
24 SHE wishes to appeal, the clerk of the court shall file and serve the
25 notice of appeal.

26 S 49. Subdivision (b) of section 835 of the family court act, as
27 amended by chapter 529 of the laws of 1963, is amended to read as
28 follows:

29 (b) Reports prepared by the probation service for use by the court at
30 any time prior to the making of an order of disposition shall be deemed
31 confidential information furnished to the court which the court in a
32 proper case may, in its discretion, withhold from or disclose in whole
33 or in part to the [law guardian] CHILD'S ATTORNEY, counsel, party in
34 interest, or other appropriate person. Such reports may not be furnished
35 to the court prior to the completion of a fact-finding hearing, but may
36 be used in a dispositional hearing.

37 S 50. Section 1016 of the family court act, as added by chapter 319 of
38 the laws of 1990, the second undesignated paragraph as amended by
39 section 9 of part A of chapter 3 of the laws of 2005, the fourth undesignated
40 paragraph as added by chapter 560 of the laws of 1990, is
41 amended to read as follows:

42 S 1016. Appointment of [law guardian] ATTORNEY FOR THE CHILD. The
43 court shall appoint [a law guardian] AN ATTORNEY to represent a child
44 who has been allegedly abused or neglected upon the earliest occurrence
45 of any of the following: (i) the court receiving notice, pursuant to
46 paragraph (iv) of subdivision (b) of section [ten hundred] ONE THOUSAND
47 twenty-four of this act, of the emergency removal of the child; (ii) an
48 application for an order for removal of the child prior to the filing of
49 a petition, pursuant to section one thousand twenty-two of this act; or
50 (iii) the filing of a petition alleging abuse or neglect pursuant to
51 this article.

52 Whenever [a law guardian] AN ATTORNEY has been appointed by the family
53 court pursuant to section two hundred forty-nine of this act to represent
54 a child in a proceeding under this article, such appointment shall
55 continue without further court order or appointment during (i) an order
56 of disposition issued by the court pursuant to section one thousand

1 fifty-two of this article directing supervision, protection or suspend-
2 ing judgment, or any extension thereof; (ii) an adjournment in contem-
3 plation of dismissal as provided for in section one thousand thirty-nine
4 of this article or any extension thereof; or (iii) the pendency of the
5 foster care placement ordered pursuant to section one thousand fifty-two
6 of this article. All notices and reports required by law shall be
7 provided to such [law guardian] ATTORNEY FOR THE CHILD. Such appoint-
8 ment shall terminate upon the expiration of such order, unless another
9 appointment of [a law guardian] AN ATTORNEY FOR THE CHILD has been made
10 by the court or unless such [law guardian] ATTORNEY makes application to
11 the court to be relieved of his or her appointment. Upon approval of
12 such application to be relieved, the court shall immediately appoint
13 another [law guardian] ATTORNEY FOR THE CHILD to whom all notices and
14 reports required by law shall be provided.

15 [A law guardian] THE ATTORNEY FOR THE CHILD shall be entitled to
16 compensation pursuant to applicable provisions of law for services
17 rendered up to and including disposition of the petition. The [law guar-
18 dian] ATTORNEY FOR THE CHILD shall, by separate application, be entitled
19 to compensation for services rendered subsequent to the disposition of
20 the petition.

21 Nothing in this section shall be construed to limit the authority of
22 the court to remove [a law guardian] THE ATTORNEY FOR THE CHILD from his
23 or her assignment.

24 S 51. Paragraphs (ii) and (iii) of subdivision (a) of section 1027 of
25 the family court act, as amended by section 15 of part A of chapter 3 of
26 the laws of 2005, are amended to read as follows:

27 (ii) In any such case where the child has been removed, any person
28 originating a proceeding under this article shall, or the [law guardian]
29 ATTORNEY FOR THE CHILD may apply for, or the court on its own motion may
30 order, a hearing at any time after the petition is filed to determine
31 whether the child's interests require protection pending a final order
32 of disposition. Such hearing must be scheduled for no later than the
33 next court day after the application for such hearing has been made.

34 (iii) In any case under this article in which a child has not been
35 removed from his or her parent or other person legally responsible FOR
36 HIS OR HER CARE, any person originating a proceeding under this article
37 or the [law guardian] ATTORNEY FOR THE CHILD may apply for, or the court
38 on its own motion may order, a hearing at any time after the petition is
39 filed to determine whether the child's interests require protection,
40 including whether the child should be removed from his or her parent or
41 other person legally responsible, pending a final order of disposition.
42 Such hearing must be scheduled for no later than the next court day
43 after the application for such hearing has been made.

44 S 52. Subdivision (a) of section 1028 of the family court act, as
45 amended by chapter 36 of the laws of 1994, is amended to read as
46 follows:

47 (a) Upon the application of the parent or other person legally respon-
48 sible for the care of a child temporarily removed under this part or
49 upon the application of the [law guardian] CHILD'S ATTORNEY for an order
50 returning the child, the court shall hold a hearing to determine whether
51 the child should be returned (i) unless there has been a hearing pursu-
52 ant to section [ten hundred] ONE THOUSAND twenty-seven of this article
53 on the removal of the child at which the parent or other person legally
54 responsible FOR THE CHILD'S CARE was present and had the opportunity to
55 be represented by counsel, or (ii) upon good cause shown. Except for
56 good cause shown, such hearing shall be held within three court days of

1 the application and shall not be adjourned. Upon such hearing, the court
2 shall grant the application, unless it finds that the return presents an
3 imminent risk to the child's life or health. If a parent or other person
4 legally responsible for the care of a child waives his or her right to a
5 hearing under this section, the court shall advise such person at that
6 time that, notwithstanding such waiver, an application under this
7 section may be made at any time during the pendency of the proceedings.

8 S 53. Subdivision (a) of section 1029 of the family court act, as
9 amended by chapter 673 of the laws of 1988, is amended to read as
10 follows:

11 (a) The family court, upon the application of any person who may orig-
12 inate a proceeding under this article, for good cause shown, may issue a
13 temporary order of protection, before or after the filing of such peti-
14 tion, which may contain any of the provisions authorized on the making
15 of an order of protection under section [ten hundred] ONE THOUSAND
16 fifty-six. If such order is granted before the filing of a petition and
17 a petition is not filed under this article within ten days from the
18 granting of such order, the order shall be vacated. In any case where a
19 petition has been filed and [a law guardian] AN ATTORNEY FOR THE CHILD
20 HAS BEEN appointed, such [law guardian] ATTORNEY may make application
21 for a temporary order of protection pursuant to the provisions of this
22 section.

23 S 54. Subdivisions (b) and (d) of section 1030 of the family court
24 act, as added by chapter 457 of the laws of 1988, are amended to read as
25 follows:

26 (b) A respondent who has not been afforded such visitation may apply
27 to the court for an order requiring the local social services official
28 having temporary custody of the child pursuant to this part or pursuant
29 to subdivision (d) of section one thousand fifty-one of this article, to
30 permit the respondent to visit the child at stated periods. Such appli-
31 cation shall be made upon notice to the local social services official
32 and to any [law guardian] ATTORNEY appointed to represent the child, who
33 shall be afforded an opportunity to be heard thereon.

34 (d) An order made under this section may be modified by the court for
35 good cause shown, upon application by any party or the child's [law
36 guardian] ATTORNEY, and upon notice of such application to all other
37 parties and the child's [law guardian] ATTORNEY, who shall be afforded
38 an opportunity to be heard thereon.

39 S 55. Paragraph (a) of subdivision 1 of section 1033-b of the family
40 court act, as amended by chapter 75 of the laws of 1991, is amended to
41 read as follows:

42 (a) At the initial appearance, the court shall appoint [a law guardi-
43 an] AN ATTORNEY to represent the interests of any child named in a peti-
44 tion who is alleged to be abused or neglected, unless [a law guardian]
45 AN ATTORNEY has already been appointed for such child pursuant to
46 section [ten hundred] ONE THOUSAND sixteen of this act.

47 S 56. Subdivision (c) of section 1036 of the family court act, as
48 amended by chapter 69 of the laws of 1991, is amended to read as
49 follows:

50 (c) In cases involving either abuse or neglect, the court may send
51 process without the state in the same manner and with the same effect as
52 process sent within the state in the exercise of personal jurisdiction
53 over any person subject to the jurisdiction of the court under section
54 three hundred one or three hundred two of the civil practice law and
55 rules, notwithstanding that such person is not a resident or domiciliary
56 of the state, where the allegedly abused or neglected child resides or

1 is domiciled within the state and the alleged abuse or neglect occurred
2 within the state. In cases involving abuse where service of a petition
3 and summons upon a non-resident or non-domiciliary respondent is
4 required, such service shall be made within ten days after its issuance.
5 If service can not be effected in ten days, an extension of the period
6 to effect service may be granted by the court for good cause shown upon
7 application of any party or the [law guardian] CHILD'S ATTORNEY. Where
8 service is effected on an out of state respondent and the respondent
9 defaults by failing to appear to answer the petition, the court may on
10 its own motion, or upon application of any party or the [law guardian]
11 CHILD'S ATTORNEY proceed to a fact finding hearing thereon.

12 S 57. Subdivisions (b) and (c) of section 1038 of the family court
13 act, subdivision (b) as added by chapter 724 of the laws of 1989, subdi-
14 vision (c) as amended by chapter 65 of the laws of 1992, are amended to
15 read as follows:

16 (b) Pursuant to a demand [pursuant to section thirty-one] MADE UNDER
17 RULE THREE THOUSAND ONE hundred twenty of the civil practice law and
18 rules, a petitioner or social services official shall provide to a
19 respondent or the [law guardian] CHILD'S ATTORNEY any records, photo-
20 graphs or other evidence demanded relevant to the proceeding, for
21 inspection and photocopying. The petitioner or social services official
22 may delete the identity of the persons who filed reports pursuant to
23 section four hundred fifteen of the social services law, unless such
24 petitioner or official intends to offer such reports into evidence at a
25 hearing held pursuant to this article. The petitioner or social services
26 official may move for a protective order to withhold records, photo-
27 graphs or evidence which will not be offered into evidence and the
28 disclosure of which is likely to endanger the life or health of the
29 child.

30 (c) A respondent or the [law guardian] CHILD'S ATTORNEY may move for
31 an order directing that any child who is the subject of a proceeding
32 under this article be made available for examination by a physician,
33 psychologist or social worker selected by such party or [law guardian]
34 THE CHILD'S ATTORNEY. In determining the motion, the court shall
35 consider the need of the respondent or [law guardian] CHILD'S ATTORNEY
36 for such examination to assist in the preparation of the case and the
37 potential harm to the child from the examination. Nothing in this
38 section shall preclude the parties from agreeing upon a person to
39 conduct such examination without court order.

40 Any examination or interview, other than a physical examination, of a
41 child who is the subject of a proceeding under this article, for the
42 purposes of offering expert testimony to a court regarding the sexual
43 abuse of the child, as such term is defined by section one thousand
44 twelve of this article, may, in the discretion of the court, be vide-
45 otaped in its entirety with access to be provided to the court, the [law
46 guardian] CHILD'S ATTORNEY and all parties. In determining whether such
47 examination or interview should be videotaped, the court shall consider
48 the effect of the videotaping on the reliability of the examination, the
49 effect of the videotaping on the child and the needs of the parties,
50 including the [law guardian] ATTORNEY FOR THE CHILD, for the videotape.
51 Prior to admitting a videotape of an examination or interview into
52 evidence, the person conducting such examination or the person operating
53 the video camera shall submit to the court a verified statement confirm-
54 ing that such videotape is a complete and unaltered videographic record
55 of such examination of the child. The proponent of entry of the vide-
56 otape into evidence must establish that the potential prejudicial effect

1 is substantially outweighed by the probative value of the videotape in
2 assessing the reliability of the validator in court. Nothing in this
3 section shall in any way affect the admissibility of such evidence in
4 any other court proceeding. The chief administrator of the courts shall
5 promulgate regulations protecting the confidentiality and security of
6 such tapes, and regulating the access thereto, consistent with the
7 provisions of this section.

8 S 58. Section 1038-a of the family court act, as amended by chapter
9 162 of the laws of 1991, is amended to read as follows:

10 S 1038-a. Discovery; upon court order. Upon motion of a petitioner or
11 [law guardian] ATTORNEY FOR THE CHILD, the court may order a respondent
12 to provide nontestimonial evidence, only if the court finds probable
13 cause that the evidence is reasonably related to establishing the alle-
14 gations in a petition filed pursuant to this article. Such order may
15 include, but not be limited to, provision for the taking of samples of
16 blood, urine, hair or other materials from the respondent's body in a
17 manner not involving an unreasonable intrusion or risk of serious phys-
18 ical injury to the respondent.

19 S 59. Subdivisions (a), (b), (c), (d) and (e) of section 1039 of the
20 family court act, subdivision (a) as amended by chapter 601 of the laws
21 of 1985, subdivision (b) as amended by chapter 707 of the laws of 1975,
22 subdivision (c) as amended by chapter 323 of the laws of 1990, subdivi-
23 sion (d) as amended by chapter 167 of the laws of 1990, and subdivision
24 (e) as amended by chapter 194 of the laws of 1990, are amended to read
25 as follows:

26 (a) Prior to or upon a fact-finding hearing, the court may upon a
27 motion by the petitioner with the consent of the respondent and the
28 child's attorney [or law guardian] or upon its own motion with the
29 consent of the petitioner, the respondent and the child's attorney [or
30 law guardian], order that the proceeding be "adjourned in contemplation
31 of dismissal". Under no circumstances shall the court order any party to
32 consent to an order under this section. The court may make such order
33 only after it has apprised the respondent of the provisions of this
34 section and it is satisfied that the respondent understands the effect
35 of such provisions.

36 (b) An adjournment in contemplation of dismissal is an adjournment of
37 the proceeding for a period not to exceed one year with a view to ulti-
38 mate dismissal of the petition in furtherance of justice. Upon the
39 consent of the petitioner, the respondent and the child's attorney [or
40 law guardian], the court may issue an order extending such period for
41 such time and upon such conditions as may be agreeable to the parties.

42 (c) Such order may include terms and conditions agreeable to the
43 parties and to the court, provided that such terms and conditions shall
44 include a requirement that the child and the respondent be under the
45 supervision of a child protective agency during the adjournment period.
46 In any order issued pursuant to this section, such agency shall be
47 directed to make a progress report to the court, the parties and the
48 child's [law guardian] ATTORNEY on the implementation of such order, no
49 later than ninety days after the issuance of such order, unless the
50 court determines that the facts and circumstances of the case do not
51 require such reports to be made. The child protective agency shall make
52 further reports to the court, the parties and the [law guardian] CHILD'S
53 ATTORNEY in such manner and at such times as the court may direct.

54 (d) Upon application of the respondent, the petitioner, the child's
55 attorney [or law guardian] or upon the court's own motion, made at any
56 time during the duration of the order, if the child protective agency

1 has failed substantially to provide the respondent with adequate super-
2 vision or to observe the terms and conditions of the order, the court
3 may direct the child protective agency to observe such terms and condi-
4 tions and provide adequate supervision or may make any order authorized
5 pursuant to section two hundred fifty-five of this act.

6 (e) Upon application of the petitioner or the child's attorney [or law
7 guardian,] or upon the court's own motion, made at any time during the
8 duration of the order, the court may restore the matter to the calendar,
9 if the court finds after a hearing that the respondent has failed
10 substantially to observe the terms and conditions of the order or to
11 cooperate with the supervising child protective agency. In such event,
12 unless the parties consent to an order pursuant to section one thousand
13 fifty-one of this act or unless the petition is dismissed upon the
14 consent of the petitioner, the court shall thereupon proceed to a fact-
15 finding hearing under this article no later than sixty days after such
16 application unless such period is extended by the court for good cause
17 shown.

18 S 60. Section 1039-a of the family court act, as amended by chapter 69
19 of the laws of 1991, is amended to read as follows:

20 S 1039-a. Procedures following adjournment in contemplation of
21 dismissal. The local child protective service shall notify the child's
22 [law guardian] ATTORNEY of an indicated report of child abuse or
23 maltreatment in which the respondent is a subject of the report or
24 another person named in the report, as such terms are defined in section
25 four hundred twelve of the social services law, while any order issued
26 pursuant to section [ten hundred] ONE THOUSAND thirty-nine or extension
27 thereof remains in effect.

28 S 61. Section 1042 of the family court act, as amended by section 4 of
29 part B of chapter 3 of the laws of 2005, is amended to read as follows:

30 S 1042. Effect of absence of parent or other person responsible for
31 care. If the parent or other person legally responsible for the child's
32 care is not present, the court may proceed to hear a petition under this
33 article only if the child is represented by counsel[, a law guardian, or
34 a guardian ad litem]. The parent or other person legally responsible for
35 the child's care shall be served with a copy of the order of disposition
36 with written notice of its entry pursuant to section one thousand thir-
37 ty-six of this article. Within one year of such service or substituted
38 service pursuant to section one thousand thirty-six of this article, the
39 parent or other person legally responsible for the child's care may move
40 to vacate the order of disposition and schedule a rehearing. Such motion
41 shall be granted on an affidavit showing such relationship or responsi-
42 bility and a meritorious defense to the petition, unless the court finds
43 that the parent or other person willfully refused to appear at the hear-
44 ing, in which case the court may deny the motion.

45 S 62. Subdivision (b) of section 1048 of the family court act, as
46 amended by chapter 141 of the laws of 1990, is amended to read as
47 follows:

48 (b) At the conclusion of a fact-finding hearing and after the court
49 has made findings required before a dispositional hearing may commence,
50 the court may on its own motion or motion of the respondent, the peti-
51 tioner or the [law guardian] CHILD'S ATTORNEY order a reasonable
52 adjournment of the proceedings[,] to enable the court to make inquiry
53 into the surroundings, conditions[,] and capacities of the persons
54 involved in the proceedings.

1 S 63. Subdivision (a) of section 1051 of the family court act, as
2 amended by chapter 160 of the laws of 1987, is amended to read as
3 follows:

4 (a) If facts sufficient to sustain the petition are established in
5 accord with part four of this article, or if all parties and the [law
6 guardian] ATTORNEY FOR THE CHILD consent, the court shall, subject to
7 the provisions of subdivision (c) of this section, enter an order find-
8 ing that the child is an abused child or a neglected child and shall
9 state the grounds for the finding.

10 S 64. Section 1052-a of the family court act, as amended by chapter 69
11 of the laws of 1991, is amended to read as follows:

12 S 1052-a. Post-dispositional procedures. The local child protective
13 service shall notify the child's [law guardian] ATTORNEY of an indicated
14 report of child abuse or maltreatment in which the respondent is a
15 subject of the report or another person named in the report, as such
16 terms are defined in section four hundred twelve of the social services
17 law, while any order issued pursuant to paragraph (i), (iii), (iv) or
18 (v) of subdivision (a) of section [ten hundred] ONE THOUSAND fifty-two
19 remains in effect against the respondent.

20 S 65. Subdivision (c) of section 1053 of the family court act, as
21 added by chapter 323 of the laws of 1990, is amended to read as follows:

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 [law guardi-
25 an] ATTORNEY on the implementation of such order. Where the order of
26 disposition is issued upon the consent of the parties and the child's
27 [law guardian] ATTORNEY, such agency shall report to the court, the
28 parties and the child's [law guardian] ATTORNEY no later than ninety
29 days after the issuance of the order, unless the court determines that
30 the facts and circumstances of the case do not require such report to be
31 made.

32 S 66. Subdivision (a) of section 1054 of the family court act, as
33 separately amended by chapters 206 and 323 of the laws of 1990, is
34 amended to read as follows:

35 (a) If the order of disposition releases the child to the custody of
36 his OR HER parent or other person legally responsible for his OR HER
37 care at the time of the filing of the petition, the court may place the
38 person to whose custody the child is released under supervision of a
39 child protective agency or of a social services official or duly author-
40 ized agency, or may enter an order of protection under section [ten
41 hundred] ONE THOUSAND fifty-six, or both. An order of supervision
42 entered under this section shall set forth the terms and conditions of
43 such supervision that the respondent must meet and the actions that the
44 child protective agency, social services official or duly authorized
45 agency must take to exercise such supervision. Except as provided for
46 herein, in any order issued pursuant to this section, the court may
47 require the child protective agency to make progress reports to the
48 court, the parties, and the child's [law guardian] ATTORNEY on the
49 implementation of such order. Where the order of disposition is issued
50 upon the consent of the parties and the child's [law guardian] ATTORNEY,
51 such agency shall report to the court, the parties and the child's [law
52 guardian] ATTORNEY no later than ninety days after the issuance of the
53 order, unless the court determines that the facts and circumstances of
54 the case do not require such report to be made.

1 S 67. Subparagraph (E) of paragraph (i) of subdivision (b) of section
2 1055 of the family court act, as amended by chapter 437 of the laws of
3 2006, is amended to read as follows:

4 (E) where the permanency goal is return to the parent and it is antic-
5 ipated that the child may be finally discharged to his or her parent
6 before the next scheduled permanency hearing, the court may provide the
7 local social services district with authority to finally discharge the
8 child to the parent without further court hearing, provided that ten
9 days prior written notice is served upon the court and [law guardian]
10 CHILD'S ATTORNEY. If the court on its own motion or the [law guardian]
11 CHILD'S ATTORNEY on motion to the court does not request the matter to
12 be brought for review before final discharge, no further permanency
13 hearings will be required. The local social services district may also
14 discharge the child on a trial basis to the parent unless the court has
15 prohibited such trial discharge or unless the court has conditioned such
16 trial discharge on another event. For the purposes of this section,
17 trial discharge shall mean that the child is physically returned to the
18 parent while the child remains in the care and custody of the local
19 social services district. Permanency hearings shall continue to be held
20 for any child who has returned to his or her parents on a trial
21 discharge. Where the permanency goal for a child aging out of foster
22 care is another planned permanent living arrangement that includes a
23 significant connection to an adult willing to be a permanency resource
24 for the child, the local social services district may also discharge the
25 child on a trial basis to the planned permanent living arrangements,
26 unless the court has prohibited or otherwise conditioned such a trial
27 discharge. Trial discharge for a child aging out of foster care shall
28 mean that a child is physically discharged but the local social services
29 district retains care and custody or custody and guardianship of the
30 child and there remains a date certain for the scheduled permanency
31 hearing. Children placed under this section shall be placed until the
32 court completes the initial permanency hearing scheduled pursuant to
33 article ten-A of this act. Should the court determine pursuant to arti-
34 cle ten-A of this act that placement shall be extended beyond completion
35 of the scheduled permanency hearing, such extended placement and any
36 such successive extensions of placement shall expire at the completion
37 of the next scheduled permanency hearing, unless the court shall deter-
38 mine, pursuant to article ten-A of this act, to continue to extend such
39 placement.

40 S 68. Subdivisions (a) and (c) of section 1055-a of the family court
41 act, as added by section 19 of part A of chapter 3 of the laws of 2005,
42 are amended to read as follows:

43 (a) In case of a substantial failure of a material condition in a
44 surrender executed pursuant to section three hundred eighty-three-c of
45 the social services law prior to finalization of the adoption of the
46 child, the court shall possess continuing jurisdiction in accordance
47 with subdivision six of such section to rehear the matter upon the
48 filing of a petition by the authorized agency, the parent or the [law
49 guardian] ATTORNEY for the child or whenever the court deems necessary.
50 In such case, the authorized agency shall notify the parent, unless such
51 notice is expressly waived by a statement written by the parent and
52 appended to or included in such instrument, the [law guardian] ATTORNEY
53 for the child and the court that approved the surrender within twenty
54 days of any substantial failure to comply with a material condition of
55 the surrender prior to the finalization of the adoption of the child. In
56 such case, the authorized agency shall file a petition on notice to the

1 parent unless notice is expressly waived by a statement written by the
2 parent and appended to or included in such instrument and the [law guar-
3 dian] ATTORNEY FOR THE CHILD in accordance with this section within
4 thirty days of such failure, except for good cause shown, in order for
5 the court to review such failure and, where necessary, to hold a hear-
6 ing; provided, however, that in the absence of such filing, the parent
7 and/or [law guardian] ATTORNEY for the child may file such a petition at
8 any time up to sixty days after notification of the failure. Such peti-
9 tion filed by a parent or [law guardian] CHILD'S ATTORNEY must be filed
10 prior to the adoption of the child.

11 (c) Nothing in this section shall limit the rights and remedies avail-
12 able to the parties and the [law guardian] ATTORNEY FOR THE CHILD pursu-
13 ant to section one hundred twelve-b of the domestic relations law with
14 respect to a failure to comply with a material condition of a surrender
15 subsequent to the finalization of the adoption of the child.

16 S 69. Subdivision (c) of section 1055-b of the family court act, as
17 added by chapter 519 of the laws of 2008, is amended to read as follows:

18 (c) As part of the order granting custody or guardianship pursuant to
19 article six of this act, the court may require that the local department
20 of social services and the [law guardian] ATTORNEY for the child receive
21 notice of and be made parties to any subsequent proceeding to modify the
22 order of custody or guardianship granted pursuant to the article six
23 proceeding.

24 S 70. Section 1057 of the family court act, as separately amended by
25 chapters 206 and 323 of the laws of 1990, is amended to read as follows:

26 S 1057. Supervision. The court may place the respondent under super-
27 vision of a child protective agency or of a social services official or
28 duly authorized agency. An order of supervision entered under this
29 section shall set forth the terms and conditions of such supervision
30 that the respondent must meet and the actions that the child protective
31 agency, social services official or duly authorized agency must take to
32 exercise such supervision. Except as provided for herein, in any order
33 issued pursuant to this section, the court may require the child protec-
34 tive agency to make progress reports to the court, the parties, and the
35 child's [law guardian] ATTORNEY on the implementation of such order.
36 Where the order of disposition is issued upon the consent of the parties
37 and the child's [law guardian] ATTORNEY, such agency shall report to the
38 court, the parties and the child's [law guardian] ATTORNEY no later than
39 ninety days after the issuance of the order, unless the court determines
40 that the facts and circumstances of the case do not require such report
41 to be made. Rules of court shall define permissible terms and conditions
42 of supervision under this section. The duration of any period of super-
43 vision shall be for an initial period of no more than one year and the
44 court may at the expiration of that period, upon a hearing and for good
45 cause shown, make successive extensions of such supervision of up to one
46 year each.

47 S 71. Section 1058 of the family court act, as amended by section 20
48 of part A of chapter 3 of the laws of 2005, is amended to read as
49 follows:

50 S 1058. Expiration of orders. No later than sixty days prior to the
51 expiration of an order issued pursuant to paragraph (i), (ii), (iv), or
52 (v) of subdivision (a) of section one thousand fifty-two of this part or
53 prior to the conclusion of the period of an adjournment in contemplation
54 of dismissal pursuant to section one thousand thirty-nine of this arti-
55 cle, where no application has been made seeking extension of such orders
56 or adjournments and, with respect to an adjournment in contemplation of

dismissal, no violations of the court's order are before the court, the child protective agency shall, whether or not the child has been or will be returned to the family, report to the court, the parties, including any non-respondent parent and the child's [law guardian] ATTORNEY on the status and circumstances of the child and family and any actions taken or contemplated by such agency with respect to such child and family.

S 72. Section 1063 of the family court act, as amended by section 22 of part A of chapter 3 of the laws of 2005, is amended to read as follows:

S 1063. Service of motion; answer. A copy of a motion under section one thousand sixty-two of this part shall promptly be served by regular mail upon the duly authorized agency or the institution having custody of the child and upon the [law guardian] CHILD'S ATTORNEY, each of whose duty it is to file an answer to the motion within five days of the receipt of the motion.

S 73. Section 1073 of the family court act, as added by chapter 962 of the laws of 1970, is amended to read as follows:

S 1073. Effect of running away from place of placement. If a child placed under section one thousand fifty-five runs away from the place of placement the court may, after hearing, revoke the order of placement and make any order, including an order of placement, that might have been made at the time the order of placement was made. The court may require that the child be present at such hearing and shall appoint [a law guardian] AN ATTORNEY to represent him OR HER.

S 74. Section 1075 of the family court act, as added by chapter 316 of the laws of 1990, is amended to read as follows:

S 1075. Special duties of [law guardian] ATTORNEY FOR THE CHILD. In addition to all other duties and responsibilities necessary to the representation of a child who is the subject of a proceeding under this article, [a law guardian] AN ATTORNEY FOR A CHILD shall upon receipt of a report from a child protective agency pursuant to sections [ten hundred] ONE THOUSAND thirty-nine, [ten hundred] ONE THOUSAND thirty-nine-a, [ten hundred] ONE THOUSAND fifty-two-a, [ten hundred] ONE THOUSAND fifty-three, [ten hundred] ONE THOUSAND fifty-four, [ten hundred] ONE THOUSAND fifty-five, [ten hundred] ONE THOUSAND fifty-seven and [ten hundred] ONE THOUSAND fifty-eight, review the information contained therein and make a determination as to whether there is reasonable cause to suspect that the child is at risk of further abuse or neglect or that there has been a substantive violation of a court order. Where the [law guardian] ATTORNEY FOR THE CHILD makes such a determination, the [law guardian] ATTORNEY shall apply to the court for appropriate relief pursuant to section [ten hundred] ONE THOUSAND sixty-one. Nothing contained in this section shall relieve a child protective agency or social services official of its duties pursuant to this act or the social services law.

S 75. Subdivision 4 of section 1081 of the family court act, as added by chapter 457 of the laws of 1988, is amended to read as follows:

4. The petition shall be served upon the respondent in a proceeding under this article, the local social services official having the care of the child, any grandparent or grandparents named in the petition as having visitation rights conferred by court order pursuant to section seventy-two or two hundred forty of the domestic relations law, and upon the child's [law guardian] ATTORNEY. The petition shall be served in such manner as the court may direct.

1 S 76. Paragraph (b) of subdivision 1 and subdivision 2 of section 1082
2 of the family court act, as added by chapter 457 of the laws of 1988,
3 are amended to read as follows:

4 (b) The department, the [law guardian] CHILD'S ATTORNEY and the
5 respondent in a proceeding under this article, shall have the right to
6 be heard [in] WITH respect to a petition for an order to enforce visita-
7 tion rights under this part.

8 2. Where the local department of social services or the [law guardian]
9 CHILD'S ATTORNEY opposes a petition described in section one thousand
10 eighty-one of this part, the department or the [law guardian] CHILD'S
11 ATTORNEY as appropriate shall serve and file an answer to the petition.
12 The court shall, upon the filing of such answer, set a date for a hear-
13 ing on such petition and shall notify the parents, grandparent or grand-
14 parents, the department and the [law guardian] CHILD'S ATTORNEY of such
15 hearing date.

16 S 77. Subdivision 4 of section 1085 of the family court act, as added
17 by chapter 378 of the laws of 1999, is amended to read as follows:

18 4. For the purposes of making a determination pursuant to subparagraph
19 (C) of paragraph (i) of subdivision one of this section, the court shall
20 not be bound by the findings of fact, conclusions of law or ultimate
21 conclusion as determined by the proceedings leading to the conviction of
22 murder in the first or second degree in this state or of an offense in
23 another jurisdiction which, if committed in this state, would constitute
24 murder in either the first or second degree, of a parent, legal guardi-
25 an, legal custodian, sibling, half-sibling or step-sibling of a child
26 who is the subject of the proceeding. In all proceedings under this
27 section, [a law guardian] AN ATTORNEY shall be appointed for the child.

28 S 78. Section 1088 of the family court act, as added by section 27 of
29 part A of chapter 3 of the laws of 2005, is amended to read as follows:

30 S 1088. Continuing court jurisdiction. If a child is placed pursuant
31 to section three hundred fifty-eight-a, three hundred eighty-four, or
32 three hundred eighty-four-a of the social services law, or pursuant to
33 section one thousand seventeen, one thousand twenty-two, one thousand
34 twenty-seven or one thousand fifty-two of this act, or directly placed
35 with a relative pursuant to section one thousand seventeen or one thou-
36 sand fifty-five of this act; or if the child is freed for adoption
37 pursuant to section three hundred eighty-three-c, three hundred eighty-
38 four or three hundred eighty-four-b of the social services law, the case
39 shall remain on the court's calendar and the court shall maintain juris-
40 diction over the case until the child is discharged from placement and
41 all orders regarding supervision, protection or services have expired.
42 The court shall rehear the matter whenever it deems necessary or desira-
43 ble, or upon motion by any party entitled to notice in proceedings under
44 this article, or by the [law guardian] ATTORNEY for the child, and when-
45 ever a permanency hearing is required by this article. While the court
46 maintains jurisdiction over the case, the provisions of section one
47 thousand thirty-eight of this act shall continue to apply.

48 S 79. Subparagraph (ii) of paragraph 1 of subdivision (b) of section
49 1089 of the family court act, as added by section 27 of part A of chap-
50 ter 3 of the laws of 2005, is amended to read as follows:

51 (ii) the agency supervising the care of the child on behalf of the
52 social services district with whom the child was placed, the child's
53 [law guardian] ATTORNEY, and the attorney for the respondent parent.

54 S 80. Clauses (C) and (G) of subparagraph (viii) of paragraph 2 of
55 subdivision (d) of section 1089 of the family court act, clause (C) as
56 amended by chapter 437 of the laws of 2006, clause (G) as added by

1 section 27 of part A of chapter 3 of the laws of 2005, are amended to
2 read as follows:

3 (C) Where the permanency goal is return to parent and it is antic-
4 ipated that the child may be returned home before the next scheduled
5 permanency hearing, the court may provide the local social services
6 district with authority to finally discharge the child to the parent
7 without further court hearing, provided that ten days prior written
8 notice is served upon the court and [law guardian] CHILD'S ATTORNEY. If
9 the court on its own motion or the [law guardian] CHILD'S ATTORNEY on
10 motion to the court does not request the matter to be brought for review
11 before final discharge, no further permanency hearings will be required.
12 The local social services district may also discharge the child on a
13 trial basis to the parent unless the court has prohibited such trial
14 discharge or unless the court has conditioned such trial discharge on
15 another event. For the purposes of this section, trial discharge shall
16 mean that the child is physically returned to the parent while the child
17 remains in the care and custody of the local social services district.
18 Permanency hearings shall continue to be held for any child who has
19 returned to his or her parents on a trial discharge. Where the permanen-
20 cy goal for a child aging out of foster care is another planned perma-
21 nent living arrangement that includes a significant connection to an
22 adult willing to be a permanency resource for the child, the local
23 social services district may also discharge the child on a trial basis
24 to the planned permanent living arrangements, unless the court has
25 prohibited or otherwise conditioned such a trial discharge. Trial
26 discharge for a child aging out of foster care shall mean that a child
27 is physically discharged but the local social services district retains
28 care and custody or custody and guardianship of the child and there
29 remains a date certain for the scheduled permanency hearing.

30 (G) Except as provided for herein, in any order issued pursuant to
31 this section, the court may require the local social services district
32 or agency to make progress reports to the court, the parties, and the
33 child's [law guardian] ATTORNEY on the implementation of such order.

34 S 81. Subparagraph (B) of paragraph (iv) of subdivision (a) and subdi-
35 vision (c) of section 1089-a of the family court act, as added by chap-
36 ter 519 of the laws of 2008, are amended to read as follows:

37 (B) if the local department of social services, the [law guardian]
38 ATTORNEY for the child, or the foster parent of the child who has been
39 the foster parent for the child for one year or more fail to consent to
40 the granting of custody or guardianship under article six of this act,
41 the court finds that granting custody or guardianship of the child to
42 the relative or suitable person is in the best interests of the child.

43 (c) As part of the order granting custody or guardianship to the rela-
44 tive or suitable person pursuant to article six of this act, the court
45 may require that the local department of social services and the [law
46 guardian] ATTORNEY for the child receive notice of and be made parties
47 to any subsequent proceeding to modify the order of custody or guardian-
48 ship granted pursuant to the article six proceeding.

49 S 82. Subdivision (a) of section 1090 of the family court act, as
50 added by section 27 of part A of chapter 3 of the laws of 2005, is
51 amended to read as follows:

52 (a) If [a law guardian] AN ATTORNEY for the child has been appointed
53 by the family court in a proceeding pursuant to section three hundred
54 fifty-eight-a, three hundred eighty-three-c, three hundred eighty-four,
55 or three hundred eighty-four-b of the social services law, or article
56 ten of this act, the appointment of the [law guardian] ATTORNEY FOR THE

1 CHILD shall continue without further court order or appointment, unless
2 another appointment of [a law guardian] AN ATTORNEY FOR THE CHILD has
3 been made by the court, until the child is discharged from placement and
4 all orders regarding supervision, protection or services have expired.
5 All notices, reports and motions required by law shall be provided to
6 [such law guardian] THE CHILD'S ATTORNEY. The [law guardian] CHILD'S
7 ATTORNEY may be relieved of his or her representation upon application
8 to the court for termination of the appointment. Upon approval of the
9 application, the court shall immediately appoint another [law guardian]
10 ATTORNEY to whom all notices, reports, and motions required by law shall
11 be provided.

12 S 83. Section 1113 of the family court act, as amended by chapter 461
13 of the laws of 1997, is amended to read as follows:

14 S 1113. Time of appeal. An appeal under this article must be taken no
15 later than thirty days after the service by a party or the [law guardi-
16 an] CHILD'S ATTORNEY upon the appellant of any order from which the
17 appeal is taken, thirty days from receipt of the order by the appellant
18 in court or thirty-five days from the mailing of the order to the appel-
19 lant by the clerk of the court, whichever is earliest.

20 All such orders shall contain the following statement in conspicuous
21 print: "Pursuant to section 1113 of the family court act, an appeal must
22 be taken within thirty days of receipt of the order by appellant in
23 court, thirty-five days from the mailing of the order to the appellant
24 by the clerk of the court, or thirty days after service by a party or
25 [law guardian] ATTORNEY FOR THE CHILD upon the appellant, whichever is
26 earliest." When service of the order is made by the court, the time to
27 take an appeal shall not commence unless the order contains such state-
28 ment and there is an official notation in the court record as to the
29 date and the manner of service of the order.

30 S 84. Subdivision (d) of section 1114 of the family court act, as
31 added by chapter 417 of the laws of 1991, is amended to read as follows:

32 (d) Any party to a child protective proceeding, or the [law guardian]
33 ATTORNEY FOR THE CHILD, may apply to a justice of the appellate division
34 for a stay of an order issued pursuant to part two of article ten of
35 this chapter returning a child to the custody of a respondent. The party
36 applying for the stay shall notify the attorneys for all parties and the
37 [law guardian] ATTORNEY FOR THE CHILD of the time and place of such
38 application. If requested by any party present, oral argument shall be
39 had on the application, except for good cause stated upon the record.
40 The party applying for the stay shall state in the application the
41 errors of fact or law allegedly committed by the family court. A party
42 applying to the court for the granting or continuation of such stay
43 shall make every reasonable effort to obtain a complete transcript of
44 the proceeding before the family court.

45 If a stay is granted, a schedule shall be set for an expedited appeal.

46 S 85. Section 1115 of the family court act, as amended by section 29
47 of part A of chapter 3 of the laws of 2005, is amended to read as
48 follows:

49 S 1115. Notices of appeal. An appeal as of right shall be taken by
50 filing the original notice of appeal with the clerk of the family court
51 in which the order was made and from which the appeal is taken.

52 A notice of appeal shall be served on any adverse party as provided
53 for in subdivision one of section five thousand five hundred fifteen of
54 the civil practice law and rules and upon the [law guardian] CHILD'S
55 ATTORNEY, if any. The appellant shall file two copies of such notice,
56 together with proof of service, with the clerk of the family court who

1 shall forthwith transmit one copy of such notice to the clerk of the
2 appropriate appellate division or as otherwise required by such appel-
3 late division.

4 S 86. Section 1118 of the family court act, as amended by chapter 437
5 of the laws of 2006, is amended to read as follows:

6 S 1118. Applicability of civil practice law and rules. The provisions
7 of the civil practice law and rules apply where appropriate to appeals
8 under this article, provided, however, that the fees required by section
9 eight thousand twenty-two of the civil practice law and rules shall not
10 be required where the attorney for the appellant or attorney for the
11 movant, as applicable, certifies that such appellant or movant has been
12 assigned counsel or [a law guardian] AN ATTORNEY FOR A CHILD pursuant to
13 section two hundred forty-nine, two hundred sixty-two or eleven hundred
14 twenty of this act or section seven hundred twenty-two of the county
15 law, or is represented by a legal aid society or a legal services
16 program or other nonprofit organization, which has as its primary
17 purpose the furnishing of legal services to indigent persons, or by
18 private counsel working on behalf of or under the auspices of such soci-
19 ety or organization. Where the attorney for the appellant or the attor-
20 ney for the movant certifies in accordance with procedures established
21 by the appropriate appellate division that the appellant or movant has
22 been represented in family court by assigned counsel or [a law guardian]
23 AN ATTORNEY FOR A CHILD, pursuant to section two hundred forty-nine, two
24 hundred sixty-two or eleven hundred twenty of this act or section seven
25 hundred twenty-two of the county law, or is represented by a legal aid
26 society or legal services program or some other nonprofit organization,
27 which has as its primary purpose the furnishing of legal services to
28 indigent persons, or by private counsel working on behalf or under the
29 auspices of such society or organization, and that the appellant, who
30 has indicated an intention to appeal, or movant, continues to be eligi-
31 ble for assignment of counsel and, in the case of counsel assigned to
32 represent an adult party, continues to be indigent, the appellant or
33 movant shall be presumed eligible for poor person relief pursuant to
34 section eleven hundred one of the civil practice law and rules and for
35 assignment of counsel on appeal without further motion. The appointment
36 of counsel and granting of poor person relief by the appellate division
37 shall continue for the purpose of filing a notice of appeal or motion
38 for leave to appeal to the court of appeals.

39 S 87. The section heading and subdivisions (b), (c), (d), (e) and (f)
40 of section 1120 of the family court act, the section heading and subdi-
41 visions (b), (c) and (e) as amended by chapter 476 of the laws of 1988,
42 subdivision (d) as amended by chapter 75 of the laws of 1991, and subdi-
43 vision (f) as added by chapter 582 of the laws of 1991, are amended to
44 read as follows:

45 Counsel [or law guardian] FOR PARTIES AND CHILDREN on appeal.

46 (b) Whenever [a law guardian] AN ATTORNEY has been appointed by the
47 family court pursuant to section two hundred forty-nine of this act to
48 represent a child in a proceeding described therein, the appointment
49 shall continue without further court order or appointment where (i) the
50 [law guardian] ATTORNEY on behalf of the child files a notice of appeal,
51 or (ii) where a party to the original proceeding files a notice of
52 appeal. The [law guardian] ATTORNEY FOR THE CHILD may be relieved of his
53 representation upon application to the court to which the appeal is
54 taken for termination of the appointment. Upon approval of such applica-
55 tion the court shall appoint another [law guardian] ATTORNEY FOR THE
56 CHILD.

1 (c) An appellate court may appoint [a law guardian] AN ATTORNEY to
2 represent a child in an appeal in a proceeding originating in the family
3 court where [a law guardian] AN ATTORNEY was not representing the child
4 at the time of the entry of the order appealed from or at the time of
5 the filing of the motion for permission to appeal and when independent
6 legal representation is not available to such child.

7 (d) Nothing in this section shall be deemed to relieve [law guardians]
8 ATTORNEYS FOR CHILDREN of their duties pursuant to subdivision one of
9 sections 354.2 and seven hundred sixty of this act.

10 (e) [Law guardians] AN ATTORNEY appointed or continuing to represent a
11 [person] CHILD under this section shall be compensated and shall receive
12 reimbursement for expenses reasonably incurred in the same manner
13 provided by section thirty-five of the judiciary law.

14 (f) In any case where [a law guardian] AN ATTORNEY is or shall be
15 representing a child in an appellate proceeding pursuant to subdivision
16 (b) or (c) of this section, such [law guardian] ATTORNEY shall be served
17 with a copy of the notice of appeal.

18 S 88. Subdivisions 2, 3, 4 and 5 of section 1121 of the family court
19 act, subdivisions 2 and 4 as added by chapter 582 of the laws of 1991,
20 subdivisions 3 and 5 as amended by chapter 437 of the laws of 2006, are
21 amended to read as follows:

22 2. Upon the filing of such order, it shall be the duty of counsel to
23 the parties and the [law guardian] CHILD to promptly advise the parties
24 in writing of the right to appeal to the appropriate appellate division
25 of the supreme court, the time limitations involved, the manner of
26 instituting an appeal and obtaining a transcript of the testimony and
27 the right to apply for leave to appeal as a poor person if the party is
28 unable to pay the cost of an appeal. It shall be the further duty of
29 such counsel [or law guardian] to explain to the client the procedures
30 for instituting an appeal, the possible reasons upon which an appeal may
31 be based and the nature and possible consequences of the appellate proc-
32 ess.

33 3. It shall also be the duty of such counsel [or law guardian] to
34 ascertain whether the party represented by such attorney wishes to
35 appeal and, if so, to serve and file the necessary notice of appeal and,
36 as applicable, to apply for leave to appeal as a poor person, to file a
37 certification of continued eligibility for appointment of counsel pursu-
38 ant to section eleven hundred eighteen of this article, and to submit
39 such other documents as may be required by the appropriate appellate
40 division.

41 4. If the party has been permitted to waive the appointment of [a law
42 guardian or] counsel appointed pursuant to section two hundred forty-
43 nine-a or two hundred sixty-two of this act, it shall be the duty of the
44 court to advise the party of the right to the appointment of [a law
45 guardian or] counsel for the purpose of filing an appeal.

46 5. Where a party wishes to appeal, it shall also be the duty of such
47 counsel [or law guardian], where appropriate, to apply for assignment of
48 counsel for such party pursuant to applicable provisions of this act,
49 the judiciary law and the civil practice law and rules, and to file a
50 certification of continued eligibility for appointment of counsel and,
51 in the case of counsel assigned to represent an adult party, continued
52 indigency, pursuant to section [eleven] ONE THOUSAND ONE hundred eigh-
53 teen of this article and to submit such other documents as may be
54 required by the appropriate appellate division.

55 S 89. Section 2306 of the public health law, as amended by chapter 512
56 of the laws of 1992, is amended to read as follows:

1 S 2306. Sexually transmissible diseases; reports and information,
2 confidential. All reports or information secured by a board of health
3 or health officer under the provisions of this article shall be confi-
4 dential except in so far as is necessary to carry out the purposes of
5 this article. Such report or information may be disclosed by court order
6 in a criminal proceeding in which it is otherwise admissible or in a
7 proceeding pursuant to article ten of the family court act in which it
8 is otherwise admissible, to the prosecution and to the defense, or in a
9 proceeding pursuant to article ten of the family court act in which it
10 is otherwise admissible, to the petitioner, respondent and [law guardi-
11 an] ATTORNEY FOR THE CHILD, provided that the subject of the report or
12 information has waived the confidentiality provided for by this section.
13 A person waives the confidentiality provided for by this section if such
14 person voluntarily discloses or consents to disclosure of such report or
15 information or a portion thereof. If such person lacks the capacity to
16 consent to such a waiver, his or her parent, guardian or [law guardian]
17 ATTORNEY may so consent. An order directing disclosure pursuant to this
18 section shall specify that no report or information shall be disclosed
19 pursuant to such order which identifies or relates to any person other
20 than the subject of the report or information.

21 S 90. Paragraph (p) of subdivision 1 of section 2782 of the public
22 health law, as added by chapter 592 of the laws of 1990, is amended to
23 read as follows:

24 (p) [a law guardian,] AN ATTORNEY appointed to represent a minor
25 pursuant to the social services law or the family court act, with
26 respect to confidential HIV related information relating to the minor
27 and for the purpose of representing the minor. If the minor has the
28 capacity to consent, the [law guardian] MINOR'S ATTORNEY may not redis-
29 close confidential HIV related information without the minor's permis-
30 sion. If the minor lacks capacity to consent, the [law guardian] MINOR'S
31 ATTORNEY may redisclose confidential HIV related information for the
32 sole purpose of representing the minor. This paragraph shall not limit
33 [a law guardian's] THE ability OF THE MINOR'S ATTORNEY to seek relief
34 under section twenty-seven hundred eighty-five of this chapter.

35 S 91. Subdivision 6 and paragraphs (b) and (c) of subdivision 10 of
36 section 358-a of the social services law, subdivision 6 as amended by
37 chapter 78 of the laws of 1978, paragraphs (b) and (c) of subdivision 10
38 as added by chapter 457 of the laws of 1988, are amended to read as
39 follows:

40 (6) Representation. In any case where a hearing is directed by the
41 family court judge, he [may, in his discretion,] OR SHE SHALL, PURSUANT
42 TO SECTION TWO HUNDRED FORTY-NINE OF THE FAMILY COURT ACT, appoint [a
43 law guardian] AN ATTORNEY to represent the child, who shall be [an
44 attorney] admitted to practice law in the state of New York.

45 (b) Where a social services official or the [law guardian of] ATTORNEY
46 FOR the child[, if any,] opposes incorporation of an order, judgment or
47 agreement conferring visitation rights as provided for in paragraph (e)
48 of subdivision two of section three hundred eighty-four-a of this chap-
49 ter, the social services official or [law guardian] ATTORNEY FOR THE
50 CHILD shall apply for an order determining that the provisions of such
51 order, judgment or agreement should not be incorporated into the instru-
52 ment executed pursuant to such section. Such order shall be granted upon
53 a finding, based on competent, relevant and material evidence, that the
54 child's life or health would be endangered by incorporation and enforce-
55 ment of visitation rights as described in such order, judgment or agree-
56 ment. Otherwise, the court shall deny such application.

1 (c) Where visitation rights pursuant to an order, judgment or agree-
2 ment are incorporated in an instrument, the parties may agree to an
3 alternative schedule of visitation equivalent to and consistent with the
4 original or modified visitation order, judgment, or agreement where such
5 alternative schedule reflects changed circumstances of the parties and
6 is consistent with the best interests of the child. In the absence of
7 such an agreement between the parties, the court may, in its discretion,
8 upon application of any party or the child's [law guardian] ATTORNEY,
9 order an alternative schedule of visitation, as described herein, where
10 it determines that such schedule is necessary to facilitate visitation
11 and to protect the best interests of the child.

12 S 92. Subdivision 3 of section 372 of the social services law, as
13 amended by chapter 394 of the laws of 1993, is amended to read as
14 follows:

15 3. Such records maintained by the department or an authorized agency,
16 including a local social services district, regarding such children are
17 confidential, provided, however, that such records are subject to the
18 provisions of article thirty-one of the civil practice law and rules.
19 When either the subject foster child, or such child's parent, or such
20 child's guardian if any, is not a party to the action, a copy of the
21 notice or motion for discovery shall be served upon such parent, guardi-
22 an, and child and, if the child is still a minor, the child's [law guar-
23 dian] ATTORNEY. Such persons may thereafter appear in the action with
24 regard to such discovery. Where no action is pending, upon application
25 by a parent, relative or legal guardian of such child or by an author-
26 ized agency, after due notice to the institution or authorized agency
27 affected and hearing had thereon, the supreme court may by order direct
28 the officers of such institution or authorized agency to furnish to such
29 parent, relative, legal guardian or authorized agency such extracts from
30 the record relating to such child as the court may deem proper. The
31 department through its authorized agents and employees may examine at
32 all reasonable times the records required by this section to be kept.

33 S 93. Paragraph (b) of subdivision 2 and subparagraphs (i) and (ii) of
34 paragraph (c) of subdivision 5 of section 383-c of the social services
35 law, paragraph (b) of subdivision 2 as added by section 41 and subpara-
36 graph (ii) of paragraph (c) of subdivision 5 as amended by section 43 of
37 part A of chapter 3 of the laws of 2005, and subparagraph (i) of para-
38 graph (c) of subdivision 5 as amended by chapter 76 of the laws of 2002,
39 are amended to read as follows:

40 (b) If a surrender instrument designates a particular person or
41 persons who will adopt a child, such person or persons, the child's
42 birth parent or parents, the authorized agency having care and custody
43 of the child and the child's [law guardian] ATTORNEY, may enter into a
44 written agreement providing for communication or contact between the
45 child and the child's parent or parents on such terms and conditions as
46 may be agreed to by the parties. If a surrender instrument does not
47 designate a particular person or persons who will adopt the child, then
48 the child's birth parent or parents, the authorized agency having care
49 and custody of the child and the child's [law guardian] ATTORNEY may
50 enter into a written agreement providing for communication or contact,
51 on such terms and conditions as may be agreed to by the parties. Such
52 agreement also may provide terms and conditions for communication with
53 or contact between the child and the child's biological siblings or
54 half-siblings, if any. If any such sibling or half-sibling is fourteen
55 years of age or older, such terms and conditions shall not be enforcea-
56 ble unless such sibling or half-sibling consents to the agreement in

1 writing. If the court before which the surrender instrument is presented
2 for approval determines that the agreement concerning communication and
3 contact is in the child's best interests, the court shall approve the
4 agreement. If the court does not approve the agreement, the court may
5 nonetheless approve the surrender; provided, however, that the birth
6 parent or parents executing the surrender instrument shall be given the
7 opportunity at that time to withdraw such instrument. Enforcement of any
8 agreement prior to the adoption of the child shall be in accordance with
9 subdivision (b) of section one thousand fifty-five-a of the family court
10 act. Subsequent to the adoption of the child, enforcement of any agree-
11 ment shall be in accordance with section one hundred twelve-b of the
12 domestic relations law.

13 (i) the authorized agency shall notify the parent, unless such notice
14 is expressly waived by a statement written by the parent and appended to
15 or included in such instrument, the [law guardian] ATTORNEY for the
16 child and the court that approved the surrender within twenty days of
17 any substantial failure of a material condition of the surrender prior
18 to the finalization of the adoption of the child; and

19 (ii) except for good cause shown, the authorized agency shall file a
20 petition on notice to the parent unless notice is expressly waived by a
21 statement written by the parent and appended to or included in such
22 instrument and [law guardian] THE CHILD'S ATTORNEY in accordance with
23 section one thousand fifty-five-a of the family court act within thirty
24 days of such failure, in order for the court to review such failure and,
25 where necessary, to hold a hearing; provided, however, that, in the
26 absence of such filing, the parent and/or [law guardian] ATTORNEY for
27 the child may file such a petition at any time up to sixty days after
28 notification of the failure. Such petition filed by a parent or [law
29 guardian] ATTORNEY FOR THE CHILD must be filed prior to the CHILD'S
30 adoption [of the child]; and

31 S 94. Paragraph (b) of subdivision 2 and subparagraphs (i) and (ii) of
32 the closing paragraph of subdivision 3 of section 384 of the social
33 services law, paragraph (b) of subdivision 2 as added by section 48 and
34 subparagraph (ii) of the closing paragraph of subdivision 3 as amended
35 by section 49 of part A of chapter 3 of the laws of 2005, and subpara-
36 graph (i) of the closing paragraph of subdivision 3 as added by chapter
37 76 of the laws of 2002, are amended to read as follows:

38 (b) If a surrender instrument designates a particular person or
39 persons who will adopt a child, such person or persons, the child's
40 birth parent or parents, the authorized agency having care and custody
41 of the child and the child's [law guardian] ATTORNEY, may enter into a
42 written agreement providing for communication or contact between the
43 child and the child's parent or parents on such terms and conditions as
44 may be agreed to by the parties.

45 If a surrender instrument does not designate a particular person or
46 persons who will adopt the child, then the child's birth parent or
47 parents, the authorized agency having care and custody of the child and
48 the child's [law guardian] ATTORNEY may enter into a written agreement
49 providing for communication or contact, on such terms and conditions as
50 may be agreed to by the parties. Such agreement also may provide terms
51 and conditions for communication with or contact between the child and
52 the child's biological sibling or half-sibling, if any. If any such
53 sibling or half-sibling is fourteen years of age or older, such terms
54 and conditions shall not be enforceable unless such sibling or half-si-
55 bling consents to the agreement in writing. If the court before which
56 the surrender instrument is presented for approval determines that the

1 agreement concerning communication and contact is in the child's best
2 interests, the court shall approve the agreement. If the court does not
3 approve the agreement, the court may nonetheless approve the surrender;
4 provided, however, that the birth parent or parents executing the
5 surrender instrument shall be given the opportunity at that time to
6 withdraw such instrument. Enforcement of any agreement prior to the
7 adoption of the child shall be in accordance with subdivision (b) of
8 section one thousand fifty-five-a of the family court act. Subsequent to
9 the adoption of the child, enforcement of any agreement shall be in
10 accordance with section one hundred twelve-b of the domestic relations
11 law.

12 (i) the authorized agency shall notify the parent, unless such notice
13 is expressly waived by a statement written by the parent and appended to
14 or included in such instrument, the [law guardian] ATTORNEY for the
15 child and the court that approved the surrender within twenty days of
16 any substantial failure of a material condition of the surrender prior
17 to the finalization of the adoption of the child; and

18 (ii) except for good cause shown, the authorized agency shall file a
19 petition on notice to the parent unless notice is expressly waived by a
20 statement written by the parent and appended to or included in such
21 instrument and [law guardian] THE CHILD'S ATTORNEY in accordance with
22 section one thousand fifty-five-a of the family court act within thirty
23 days of such failure, in order for the court to review such failure and,
24 where necessary, to hold a hearing; provided, however, that, in the
25 absence of such filing, the parent and/or [law guardian] ATTORNEY for
26 the child may file such a petition at any time up to sixty days after
27 notification of such failure. Such petition filed by a parent or [law
28 guardian] ATTORNEY FOR THE CHILD must be filed prior to the CHILD'S
29 adoption [of the child]; and

30 S 95. Paragraph (f) of subdivision 2 of section 384-a of the social
31 services law, as added by chapter 457 of the laws of 1988, is amended to
32 read as follows:

33 (f) Nothing in this section shall be deemed to prohibit a social
34 services official or [a law guardian of] AN ATTORNEY FOR the child, if
35 any, from making an application to modify the terms of a visitation
36 order, incorporated pursuant to this section, for good cause shown, upon
37 notice to all interested parties, or to limit the right of a non-custo-
38 dial parent or grandparent to seek visitation pursuant to applicable
39 provisions of law.

40 S 96. Paragraphs (b), (c) and (c-1) and subparagraph (iv) of paragraph
41 (1) of subdivision 3 of section 384-b of the social services law, para-
42 graph (b) as amended by section 55 of part A of chapter 3 of the laws of
43 2005, paragraph (c) as amended and paragraph (c-1) as added by chapter
44 185 of the laws of 2006, subparagraph (iv) of paragraph (1) as added by
45 chapter 7 of the laws of 1999, are amended to read as follows:

46 (b) A proceeding under this section may be originated by an authorized
47 agency or by a foster parent authorized to do so pursuant to section one
48 thousand eighty-nine of the family court act or by a relative with care
49 and custody of the child or, if an authorized agency ordered by the
50 court to originate a proceeding under this section fails to do so within
51 the time fixed by the court, by [a law guardian] THE CHILD'S ATTORNEY or
52 guardian ad litem [of the child] on the court's direction.

53 (c) Where a child was placed or continued in foster care pursuant to
54 article ten or ten-A of the family court act or section three hundred
55 fifty-eight-a of this chapter, a proceeding under this section shall be
56 originated in the family court in the county in which the proceeding

1 pursuant to article ten or ten-A of the family court act or section
2 three hundred fifty-eight-a of this chapter was last heard and shall be
3 assigned, wherever practicable, to the judge who last heard such
4 proceeding. Where multiple proceedings are commenced under this section
5 concerning a child and one or more siblings or half-siblings of such
6 child, placed or continued in foster care with the same commissioner
7 pursuant to section one thousand fifty-five or one thousand eighty-nine
8 of the family court act, all of such proceedings may be commenced joint-
9 ly in the family court in any county which last heard a proceeding under
10 article ten or ten-A of the family court act regarding any of the chil-
11 dren who are the subjects of the proceedings under this section. In such
12 instances, the case shall be assigned, wherever practicable, to the
13 judge who last presided over such proceeding. In any other case, a
14 proceeding under this section, including a proceeding brought in the
15 surrogate's court, shall be originated in the county where either of the
16 parents of the child reside at the time of the filing of the petition,
17 if known, or, if such residence is not known, in the county in which the
18 authorized agency has an office for the regular conduct of business or
19 in which the child resides at the time of the initiation of the proceed-
20 ing. To the extent possible, the court shall, when appointing [a law
21 guardian] AN ATTORNEY for the child, appoint [a law guardian] AN ATTOR-
22 NEY who has previously represented the child.

23 (c-1) Before hearing a petition under this section, the court in which
24 the termination of parental rights petition has been filed shall ascer-
25 tain whether the child is under the jurisdiction of a family court
26 pursuant to a placement in a child protective or foster care proceeding
27 or continuation in out-of-home care pursuant to a permanency hearing
28 and, if so, which court exercised jurisdiction over the most recent
29 proceeding. If the court determines that the child is under the juris-
30 diction of a different family court, the court in which the termination
31 of parental rights petition was filed shall stay its proceeding for not
32 more than thirty days and shall communicate with the court that exer-
33 cised jurisdiction over the most recent proceeding. The communication
34 shall be recorded or summarized on the record by the court in which the
35 termination of parental rights petition was filed. Both courts shall
36 notify the parties and [law guardian] CHILD'S ATTORNEY, if any, in their
37 respective proceedings and shall give them an opportunity to present
38 facts and legal argument or to participate in the communication prior to
39 the issuance of a decision on jurisdiction. The court that exercised
40 jurisdiction over the most recent proceeding shall determine whether it
41 will accept or decline jurisdiction over the termination of parental
42 rights petition. This determination of jurisdiction shall be incorpo-
43 rated into an order regarding jurisdiction that shall be issued by the
44 court in which the termination of parental rights petition was filed
45 within thirty days of such filing. If the court that exercised jurisdic-
46 tion over the most recent proceeding determines that it should exercise
47 jurisdiction over the termination of parental rights petition, the order
48 shall require that the petition shall be transferred to that court
49 forthwith but in no event more than thirty-five days after the filing of
50 the petition. The petition shall be assigned, wherever practicable, to
51 the judge who heard the most recent proceeding. If the court that exer-
52 cised jurisdiction over the most recent proceeding declines to exercise
53 jurisdiction over the adoption petition, the court in which the termi-
54 nation of parental rights petition was filed shall issue an order incor-
55 porating that determination and shall proceed forthwith.

1 (iv) In the event that the social services official or authorized
2 agency having care and custody of the child fails to file a petition to
3 terminate parental rights within sixty days of the time required by this
4 section, or within ninety days of a court direction to file a proceeding
5 not otherwise required by this section, such proceeding may be filed by
6 the foster parent of the child without further court order or by the
7 [law guardian] ATTORNEY FOR THE CHILD on the direction of the court. In
8 the event of such filing the social services official or authorized
9 agency having care and custody of the child shall be served with notice
10 of the proceeding and shall join the petition.

11 S 97. Subdivision 4 of section 409-e of the social services law, as
12 amended by chapter 725 of the laws of 1992, is amended to read as
13 follows:

14 4. In accordance with regulations of the department, relevant portions
15 of the assessment of the child and family circumstances, including but
16 not limited to the material described in paragraph (d) of subdivision
17 one of this section, and a complete copy of the family service plan,
18 established pursuant to subdivisions one and two, respectively, of this
19 section shall be given to the child's parent or guardian, counsel for
20 such parent or guardian, and the child's [law guardian] ATTORNEY, if
21 any, within ten days of preparation of any such plan.

22 S 98. Subdivision 1 of section 409-f of the social services law, as
23 amended by chapter 725 of the laws of 1992 and as designated by chapter
24 653 of the laws of 1995, is amended to read as follows:

25 1. With respect to each child described in subdivision one of section
26 four hundred nine-e of this title, the social services district shall
27 establish and maintain a uniform case record, consisting of the assess-
28 ment, the family service plan, descriptions of care, maintenance or
29 services provided to such child and family and the dates provided,
30 essential data relating to the identification and history of such child
31 and family, all official documents and records of any judicial or admin-
32 istrative proceedings relating to the district's contact with the child
33 and family, and such other records as the department may by regulation
34 require to adequately review case management by the districts. The
35 department shall by regulation specify the format and contents of the
36 uniform case record. Such regulation shall be developed [with the
37 participation of the child welfare standards advisory council estab-
38 lished pursuant to section four hundred nine-h of this chapter and] in
39 consultation with public and voluntary authorized agencies, citizens'
40 groups and concerned individuals and organizations, including the state
41 council on children and families. The uniform case record shall be main-
42 tained by the district in a manner consistent with the confidential
43 nature of such records and shall be made available in accordance with
44 applicable provisions of law. When a hearing has been requested in
45 accordance with section twenty-two of this chapter, a copy of the
46 portions of the record relevant to the hearing shall also be made avail-
47 able to the child's parent or guardian, counsel for the parent or guard-
48 ian, and, if participating in the hearing, the child's [law guardian]
49 ATTORNEY.

50 S 99. Subparagraphs (r) and (t) of paragraph (A) of subdivision 4 of
51 section 422 of the social services law, as amended by chapter 12 of the
52 laws of 1996, are amended to read as follows:

53 (r) in relation to a report involving a child in residential care, the
54 director or operator of the residential facility or program and, as
55 appropriate, the local social services commissioner or school district
56 placing the child, the division for youth, the department of education,

1 the commission on quality of care for the mentally disabled, the office
2 of mental health, the office of mental retardation and developmental
3 disabilities, and any [law guardian] ATTORNEY appointed to represent the
4 child whose appointment has been continued by a family court judge
5 during the term of the placement, subject to the limitations contained
6 in subdivisions nine and ten of this section and subdivision five of
7 section four hundred twenty-four-c of this title;
8 (t) [a law guardian] AN ATTORNEY FOR A CHILD, appointed pursuant to
9 the provisions of section [ten hundred] ONE THOUSAND sixteen of the
10 family court act, at any time such appointment is in effect, in relation
11 to any report in which the respondent in the proceeding in which the
12 [law guardian] ATTORNEY FOR A CHILD has been appointed is the subject or
13 another person named in the report, pursuant to sections [ten hundred]
14 ONE THOUSAND thirty-nine-a and [ten hundred] ONE THOUSAND fifty-two-a of
15 the family court act;
16 S 100. This act shall take effect immediately.