

5457

2011-2012 Regular Sessions

I N S E N A T E

May 24, 2011

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the social services law and the family court act, in relation to the care and custody of destitute children; and to repeal paragraph (i) of subdivision 6 of section 398 of the social services law relating to providing care for destitute minors between sixteen and eighteen years of age

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

1 Section 1. Subdivision 3 of section 371 of the social services law, as
2 amended by chapter 722 of the laws of 1978, paragraph (d) as amended and
3 paragraph (e) as added by chapter 342 of the laws of 2010, is amended to
4 read as follows:
5 3. "Destitute child" means a child who[, through no neglect on the
6 part of its parent, guardian or custodian, is]
7 (a) [destitute or homeless, or
8 (b)] IS NOT SUBJECT TO ARTICLE TEN OF THE FAMILY COURT ACT, IS UNAC-
9 COMPANIED BY A PARENT OR OTHER LEGALLY RESPONSIBLE PERSON, AND IS EITHER
10 in a state of want or suffering due to lack of sufficient food, cloth-
11 ing, [or] shelter, or medical or surgical care, or
12 [(c) a person under the age of eighteen years who is absent from his
13 legal residence without the consent of his parent, legal guardian or
14 custodian, or
15 (d) a person under the age of eighteen who] is without a place of
16 shelter where APPROPRIATE supervision and care are available, or
17 [(e)] (B) IS a former foster care youth under the age of twenty-one
18 who was previously placed in the care and custody or custody and guardi-
19 anship of the local commissioner of social services or other officer,
20 board or department authorized to receive children as public charges,
21 and who was discharged from foster care due to a failure to consent to
22 continuation in placement, who has returned to foster care pursuant to
23 section one thousand ninety-one of the family court act.
24 S 2. The social services law is amended by adding a new section 384-d
25 to read as follows:

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

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1 S 384-D. CARE AND CUSTODY OF DESTITUTE CHILDREN. 1. SCOPE. THIS
2 SECTION PROVIDES A MECHANISM FOR A LOCAL COMMISSIONER OF SOCIAL SERVICES
3 TO OBTAIN AN ORDER OF CUSTODY FOR CERTAIN DESTITUTE CHILDREN FOR WHOM HE
4 OR SHE IS PROVIDING CARE AND FOR CONTINUED COURT REVIEW OF THE CARE OF
5 THESE CHILDREN.

6 2. INITIATION OF JUDICIAL PROCEEDING. A LOCAL COMMISSIONER OF SOCIAL
7 SERVICES SHALL, WITHIN THIRTY DAYS OF ACCEPTING THE CARE AS A PUBLIC
8 CHARGE OF A CHILD WHO APPEARS TO BE A DESTITUTE CHILD, AS DEFINED IN
9 PARAGRAPH (A) OF SUBDIVISION THREE OF SECTION THREE HUNDRED SEVENTY-ONE
10 OF THIS TITLE, FILE A PETITION IN THE FAMILY COURT ALLEGING THAT THE
11 CHILD IS A DESTITUTE CHILD AND REQUESTING THAT THE COURT PLACE THE CHILD
12 IN THE TEMPORARY CARE AND CUSTODY OF SUCH COMMISSIONER WHILE AN INVESTI-
13 GATION IS COMMENCED TO DETERMINE WHETHER THE CHILD IS AN ABUSED OR
14 NEGLECTED CHILD SUBJECT TO THE PROVISIONS OF ARTICLE TEN OF THE FAMILY
15 COURT ACT OR A DESTITUTE CHILD AS DEFINED IN PARAGRAPH (A) OF SUBDIVI-
16 SION THREE OF SECTION THREE HUNDRED SEVENTY-ONE OF THIS TITLE.

17 3. CONTENTS OF PETITION. (A) THE PETITION SHALL SET FORTH:

18 (I) THE BASIS FOR THE BELIEF THAT THE CHILD IS A DESTITUTE CHILD;

19 (II) WHETHER THE WHEREABOUTS OF THE PARENT OR PARENTS, GUARDIAN OR
20 GUARDIANS, OR OTHER PERSON LEGALLY RESPONSIBLE ARE KNOWN, AND IF SO, THE
21 ALLEGED ADDRESS OF THAT PERSON; AND

22 (III) ANY OTHER KNOWN PERSONS LEGALLY RESPONSIBLE FOR THE CHILD, AND
23 ANY OTHER RELATIVES OF THE CHILD.

24 (B) THE PETITION SHALL CONTAIN A NOTICE IN CONSPICUOUS PRINT PROVIDING
25 THAT IF THE CHILD REMAINS IN FOSTER CARE FOR FIFTEEN OF THE TWENTY-TWO
26 MONTHS THAT FOLLOW, THE AGENCY MAY BE REQUIRED BY LAW TO FILE A PETITION
27 TO TERMINATE PARENTAL RIGHTS.

28 (C) THE PETITION SHALL ALSO SET FORTH THE EFFORTS THAT WERE MADE,
29 PRIOR TO THE PLACEMENT OF THE CHILD INTO FOSTER CARE, TO PREVENT REMOVAL
30 OF THE CHILD FROM HIS OR HER HOME AND THE EFFORTS WHICH WERE MADE, PRIOR
31 TO THE FILING OF THE PETITION, TO MAKE IT POSSIBLE FOR THE CHILD TO
32 RETURN SAFELY HOME. IF SUCH EFFORTS WERE NOT MADE, THE PETITION SHALL
33 SET FORTH THE REASONS WHY THESE EFFORTS WERE NOT MADE.

34 (D) THE PETITION SHALL REQUEST THAT A TEMPORARY ORDER BE MADE TRANS-
35 FERRING THE CARE AND CUSTODY OF THE CHILD TO THE LOCAL COMMISSIONER OF
36 SOCIAL SERVICES.

37 4. INITIAL APPEARANCE. AT THE INITIAL APPEARANCE:

38 (A) THE COURT SHALL APPOINT AN ATTORNEY TO REPRESENT THE CHILD; AND

39 (B) THE COURT SHALL CONSIDER THE FOLLOWING ISSUES AND INCLUDE ITS
40 FINDINGS IN ITS ORDER:

41 (I) WHETHER PLACEMENT OF THE CHILD IN THE TEMPORARY CARE AND CUSTODY
42 OF THE LOCAL COMMISSIONER OF SOCIAL SERVICES IS IN THE BEST INTEREST OF
43 THE CHILD;

44 (II) WHETHER IT WOULD BE CONTRARY TO THE WELFARE OF THE CHILD TO
45 CONTINUE IN HIS OR HER OWN HOME;

46 (III) WHETHER, WHERE APPROPRIATE, REASONABLE EFFORTS WERE MADE PRIOR
47 TO THE PLACEMENT OF THE CHILD INTO FOSTER CARE TO PREVENT REMOVAL FROM
48 HIS OR HER HOME;

49 (IV) WHETHER, PRIOR TO THE INITIATION OF THE COURT PROCEEDING REQUIRED
50 PURSUANT TO THIS SUBDIVISION, REASONABLE EFFORTS WERE MADE TO MAKE IT
51 POSSIBLE FOR THE CHILD TO RETURN SAFELY HOME; AND

52 (V) IF REASONABLE EFFORTS TO PREVENT THE NECESSITY FOR REMOVAL OF THE
53 CHILD FROM THE HOME WERE NOT MADE, WHETHER THE ABSENCE OF THOSE EFFORTS
54 WAS REASONABLE UNDER THE CIRCUMSTANCES.

55 (C) IF THE COURT PLACES THE CHILD IN THE TEMPORARY CUSTODY OF THE
56 LOCAL COMMISSIONER OF SOCIAL SERVICES, THE COURT SHALL:

1 (I) ORDER AN INVESTIGATION INTO THE FAMILY CIRCUMSTANCES OF THE CHILD
2 IN ORDER TO DETERMINE WHAT ASSISTANCE AND CARE, SUPERVISION OR TREAT-
3 MENT, IF ANY, SUCH CHILD REQUIRES;

4 (II) SCHEDULE A RETURN DATE FOR AN INVESTIGATION REVIEW PROCEEDING
5 WITHIN SIXTY DAYS IN ACCORDANCE WITH SUBDIVISION SIX OF THIS SECTION;

6 (III) SCHEDULE A DATE CERTAIN FOR AN INITIAL PERMANENCY HEARING PURSU-
7 ANT TO PARAGRAPH TWO OF SUBDIVISION (A) OF SECTION ONE THOUSAND EIGHTY-
8 NINE OF THE FAMILY COURT ACT. THIS DATE SHALL BE NO LATER THAN EIGHT
9 MONTHS FROM THE DATE THE LOCAL COMMISSIONER OF SOCIAL SERVICES ACCEPTED
10 CARE OF THE CHILD.

11 5. NOTICE. AT THE INITIAL APPEARANCE AND AT ANY HEARING THEREAFTER,
12 THE COURT MAY DIRECT THAT SERVICE OF A NOTICE OF THE PROCEEDING AND A
13 COPY OF THE PETITION SHALL BE MADE UPON THE PARENT OR PARENTS, GUARDIAN
14 OR GUARDIANS OR OTHER LEGALLY RESPONSIBLE PERSON IN SUCH MANNER AS THE
15 COURT MAY DIRECT. IF THE COURT ORDERS SERVICE BY PUBLICATION, SERVICE
16 SHALL BE MADE PURSUANT TO RULE THREE HUNDRED SIXTEEN OF THE CIVIL PRAC-
17 TICE LAW AND RULES, PROVIDED THAT A SINGLE PUBLICATION OF THE SUMMONS OR
18 OTHER PROCESS WITH A NOTICE IN ONLY ONE NEWSPAPER DESIGNATED IN THE
19 ORDER SHALL BE SUFFICIENT. IN NO EVENT SHALL THE ENTIRE PETITION BE
20 PUBLISHED. THE NOTICE TO BE PUBLISHED WITH THE SUMMONS OR OTHER PROCESS
21 SHALL STATE THE DATE, TIME, PLACE AND PURPOSE OF THE PROCEEDING.

22 6. INVESTIGATION REVIEW PROCEEDING. AT THE INVESTIGATION REVIEW
23 PROCEEDING, THE COURT SHALL:

24 (A) REVIEW THE RESULT OF THE INVESTIGATION CONDUCTED BY THE LOCAL
25 COMMISSIONER OF SOCIAL SERVICES OF THE FAMILY CIRCUMSTANCES OF THE
26 CHILD;

27 (B) DETERMINE WHETHER:

28 (I) FURTHER INVESTIGATION IS NECESSARY, AND IF SO, SCHEDULE A DATE FOR
29 SUCH PROCEEDING;

30 (II) NOTICE SHALL BE MADE UPON ANY PARENT, GUARDIAN OR OTHER LEGALLY
31 RESPONSIBLE PERSON AND THE METHOD OF SUCH NOTICE;

32 (III) A PETITION UNDER ARTICLE TEN OF THE FAMILY COURT ACT SHOULD BE
33 SUBSTITUTED FOR THE PROCEEDING DESCRIBED BY THIS SECTION; AND

34 (IV) THE CHILD IS A DESTITUTE CHILD AS DEFINED IN PARAGRAPH (A) OF
35 SUBDIVISION THREE OF SECTION THREE HUNDRED SEVENTY-ONE OF THIS TITLE.

36 7. DISPOSITION AND ORDER. IF THE COURT DETERMINES THAT THE CHILD IS A
37 DESTITUTE CHILD, THE COURT SHALL ISSUE AN ORDER PLACING THE CHILD IN THE
38 CARE AND CUSTODY OF THE LOCAL COMMISSIONER OF SOCIAL SERVICES.

39 (A) SUCH ORDER SHALL CONTAIN THE DATE SCHEDULED FOR THE INITIAL
40 PERMANENCY HEARING.

41 (B) SUCH ORDER SHALL REQUIRE THAT THE PLACEMENT CONTINUE UNTIL THE
42 COMPLETION OF THE INITIAL PERMANENCY HEARING.

43 (C) IF THE COURT DETERMINES THAT PLACEMENT SHOULD CONTINUE AFTER
44 COMPLETION OF THE INITIAL PERMANENCY HEARING, SUBSEQUENT PERMANENCY
45 HEARINGS SHALL BE SCHEDULED PURSUANT TO PARAGRAPH TWO OF SUBDIVISION (A)
46 OF SECTION ONE THOUSAND EIGHTY-NINE OF THE FAMILY COURT ACT.

47 S 3. Subdivision 1 of section 398 of the social services law is
48 amended to read as follows:

49 1. As to destitute children: Assume charge of, and provide CARE AND
50 support for, any destitute child who cannot be properly cared for in his
51 OR HER home, AND FILE A PETITION TO OBTAIN CUSTODY OF A DESTITUTE CHILD
52 AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION THREE OF SECTION THREE
53 HUNDRED SEVENTY-ONE OF THIS ARTICLE PURSUANT TO SECTION THREE HUNDRED
54 EIGHTY-FOUR-D OF THIS ARTICLE.

55 4. The opening paragraph and paragraphs (a), (b) and (f) of subdivi-
56 sion 2 of section 398 of the social services law, the opening paragraph

1 and paragraph (a) as amended by chapter 880 of the laws of 1976, para-
2 graph (b) as amended by chapter 555 of the laws of 1978 and paragraph
3 (f) as added by chapter 627 of the laws of 1984, are amended to read as
4 follows:

5 As to neglected, abused [or], abandoned, OR DESTITUTE children:

6 (a) Investigate [the] ANY alleged neglect, abuse or abandonment of a
7 child[,]; offer protective social services to prevent injury to the
8 child, to safeguard his OR HER welfare, and to preserve and stabilize
9 family life wherever possible [and,]; if necessary, bring the case
10 before the family court for adjudication and care for the child until
11 the court acts in the matter; and, in the case of an abandoned OR A
12 DESTITUTE child, AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION THREE OF
13 SECTION THREE HUNDRED SEVENTY-ONE OF THIS ARTICLE, [shall] promptly
14 petition the family court to obtain custody of such child.

15 (b) Receive and care for any child alleged to be neglected, abused
16 [or], abandoned, OR DESTITUTE who is temporarily placed in [his] THE
17 care OF THE LOCAL COMMISSIONER OF SOCIAL SERVICES by the family court
18 pending adjudication by such court of the alleged neglect, abuse or
19 abandonment, OR FINDING THAT THE CHILD IS A DESTITUTE CHILD, including
20 the authority to establish, operate, maintain and approve facilities for
21 such purpose in accordance with the regulations of the [department]
22 OFFICE OF CHILDREN AND FAMILY SERVICES; and receive and care for any
23 neglected, abused [or], abandoned, OR DESTITUTE child placed or
24 discharged to [his] THE care OF THE LOCAL COMMISSIONER OF SOCIAL
25 SERVICES by the family court.

26 (f) Report to the local criminal justice agency and to the statewide
27 central register for missing children as described in section eight
28 hundred thirty-seven-e of the executive law such information as required
29 on a form prescribed by the commissioner of the division of criminal
30 justice services within forty-eight hours after an abandoned OR DESTITUTE
31 child is found.

32 S 5. Paragraph (i) of subdivision 6 of section 398 of the social
33 services law is REPEALED.

34 S 6. Subdivision (a) of section 249 of the family court act, as
35 amended by chapter 41 of the laws of 2010, is amended to read as
36 follows:

37 (a) In a proceeding under article three, seven, ten or ten-A of this
38 act or where a revocation of an adoption consent is opposed under
39 section one hundred fifteen-b of the domestic relations law or in any
40 proceeding under section three hundred fifty-eight-a, three hundred
41 eighty-three-c, three hundred eighty-four [or], three hundred eighty-
42 four-b, OR THREE HUNDRED EIGHTY-FOUR-D of the social services law or
43 when a minor is sought to be placed in protective custody under section
44 one hundred fifty-eight of this act, the family court shall appoint an
45 attorney to represent a minor who is the subject of the proceeding or
46 who is sought to be placed in protective custody, if independent legal
47 representation is not available to such minor. In any proceeding to
48 extend or continue the placement of a juvenile delinquent or person in
49 need of supervision pursuant to section seven hundred fifty-six or 353.3
50 of this act or any proceeding to extend or continue a commitment to the
51 custody of the commissioner of mental health or the commissioner of
52 mental retardation and developmental disabilities pursuant to section
53 322.2 of this act, the court shall not permit the respondent to waive
54 the right to be represented by counsel chosen by the respondent,
55 respondent's parent, or other person legally responsible for the
56 respondent's care, or by assigned counsel. In any other proceeding in

1 which the court has jurisdiction, the court may appoint an attorney to
2 represent the child, when, in the opinion of the family court judge,
3 such representation will serve the purposes of this act, if independent
4 legal counsel is not available to the child. The family court on its own
5 motion may make such appointment.

6 S 7. Section 1086 of the family court act, as added by section 27 of
7 part A of chapter 3 of the laws of 2005, is amended to read as follows:

8 S 1086. Purpose. The purpose of this article is to establish uniform
9 procedures for permanency hearings for all children who are placed in
10 foster care pursuant to section three hundred fifty-eight-a, three
11 hundred eighty-four [or], three hundred eighty-four-a, OR THREE HUNDRED
12 EIGHTY-FOUR-D of the social services law or pursuant to section one
13 thousand twenty-two, one thousand twenty-seven, or one thousand fifty-
14 two of this act; children who are directly placed with a relative pursu-
15 ant to section one thousand seventeen or one thousand fifty-five of this
16 act; and children who are freed for adoption. It is meant to provide
17 children placed out of their homes timely and effective judicial review
18 that promotes permanency, safety and well-being in their lives.

19 S 8. Subdivision (a) of section 1087 of the family court act, as
20 amended by chapter 342 of the laws of 2010, is amended to read as
21 follows:

22 (a) "Child" shall mean a person under the age of eighteen who is
23 placed in foster care pursuant to section three hundred fifty-eight-a,
24 three hundred eighty-four [or], three hundred eighty-four-a, OR THREE
25 HUNDRED EIGHTY-FOUR-D of the social services law or pursuant to section
26 one thousand twenty-two, one thousand twenty-seven, or one thousand
27 fifty-two of this act; or directly placed with a relative pursuant to
28 section one thousand seventeen or one thousand fifty-five of this act;
29 or who has been freed for adoption or a person between the ages of eigh-
30 teen and twenty-one who has consented to continuation in foster care or
31 trial discharge status; or a former foster care youth under the age of
32 twenty-one for whom a court has granted a motion to permit the former
33 foster care youth to return to the custody of the local commissioner of
34 social services or other officer, board or department authorized to
35 receive children as public charges.

36 S 9. Section 1088 of the family court act, as separately amended by
37 chapters 41 and 342 of the laws of 2010, is amended to read as follows:

38 S 1088. Continuing court jurisdiction. If a child is placed pursuant
39 to section three hundred fifty-eight-a, three hundred eighty-four, [or]
40 three hundred eighty-four-a OR THREE HUNDRED EIGHTY-FOUR-D of the social
41 services law, or pursuant to section one thousand seventeen, one thou-
42 sand twenty-two, one thousand twenty-seven or one thousand fifty-two of
43 this act, or directly placed with a relative pursuant to section one
44 thousand seventeen or one thousand fifty-five of this act; or if the
45 child is freed for adoption pursuant to section three hundred eighty-
46 three-c, three hundred eighty-four or three hundred eighty-four-b of the
47 social services law, the case shall remain on the court's calendar and
48 the court shall maintain jurisdiction over the case until the child is
49 discharged from placement and all orders regarding supervision,
50 protection or services have expired. The court shall rehear the matter
51 whenever it deems necessary or desirable, or upon motion by any party
52 entitled to notice in proceedings under this article, or by the attorney
53 for the child, and whenever a permanency hearing is required by this
54 article. While the court maintains jurisdiction over the case, the
55 provisions of section one thousand thirty-eight of this act shall
56 continue to apply. The court shall also maintain jurisdiction over a

1 case for purposes of hearing a motion to permit a former foster care
2 youth under the age of twenty-one who was discharged from foster care
3 due to a failure to consent to continuation of placement to return to
4 the custody of the local commissioner of social services or other offi-
5 cer, board or department authorized to receive children as public charg-
6 es.

7 S 10. Paragraph 2 of subdivision (a) of section 1089 of the family
8 court act, as amended by chapter 437 of the laws of 2006, is amended to
9 read as follows:

10 (2) All other permanency hearings. At the conclusion of the hearing
11 pursuant to section one thousand twenty-two, one thousand twenty-seven,
12 or one thousand fifty-two of this act, OR SECTION THREE HUNDRED EIGHTY-
13 FOUR-D OF THE SOCIAL SERVICES LAW, at which the child was remanded or
14 placed and upon the court's approval of a voluntary placement instrument
15 pursuant to section three hundred fifty-eight-a of the social services
16 law, the court shall set a date certain for an initial permanency hear-
17 ing, advise all parties in court of the date set and include the date in
18 the order. Orders issued in subsequent court hearings prior to the
19 permanency hearing, including, but not limited to, the order of place-
20 ment issued pursuant to section one thousand fifty-five of this act, OR
21 PURSUANT TO SECTION THREE HUNDRED EIGHTY-FOUR-D OF THE SOCIAL SERVICES
22 LAW, shall include the date certain for the permanency hearing. The
23 initial permanency hearing shall be commenced no later than six months
24 from the date which is sixty days after the child was removed from his
25 or her home; provided, however, that if a sibling or half-sibling of the
26 child has previously been removed from the home and has a permanency
27 hearing date certain scheduled within the next eight months, the perman-
28 ency hearing for each child subsequently removed from the home shall be
29 scheduled on the same date certain that has been set for the first child
30 removed from the home, unless such sibling or half-sibling has been
31 removed from the home pursuant to article three or seven of this act.
32 The permanency hearing shall be completed within thirty days of the
33 scheduled date certain.

34 S 11. Subdivision (a) of section 1090 of the family court act, as
35 separately amended by chapters 41 and 342 of the laws of 2010, is
36 amended to read as follows:

37 (a) If an attorney for the child has been appointed by the family
38 court in a proceeding pursuant to section three hundred fifty-eight-a,
39 three hundred eighty-three-c, three hundred eighty-four, [or] three
40 hundred eighty-four-b, OR THREE HUNDRED EIGHTY-FOUR-D of the social
41 services law, or article ten of this act, the appointment of the attor-
42 ney for the child shall continue without further court order or appoint-
43 ment, unless another appointment of an attorney for the child has been
44 made by the court, until the child is discharged from placement and all
45 orders regarding supervision, protection or services have expired. The
46 attorney shall also represent the child without further order or
47 appointment in any proceedings under article ten-B of this act. All
48 notices, reports and motions required by law shall be provided to the
49 child's attorney. The child's attorney may be relieved of his or her
50 representation upon application to the court for termination of the
51 appointment. Upon approval of the application, the court shall imme-
52 diately appoint another attorney to whom all notices, reports, and
53 motions required by law shall be provided.

54 S 12. This act shall take effect immediately.