

563

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

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

AN ACT to amend the family court act, in relation to establishing kinship guardianship

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

1 Section 1. The family court act is amended by adding a new section
2 1059-a to read as follows:
3 S 1059-A. KINSHIP GUARDIANSHIP. 1. DEFINITIONS. WHEN USED IN THIS
4 SECTION:
5 A. "KINSHIP FOSTER CHILD" SHALL MEAN A CHILD PLACED WITH A SOCIAL
6 SERVICES OFFICIAL PURSUANT TO SECTION ONE THOUSAND FIFTY-FIVE OF THIS
7 ARTICLE WHO IS PLACED EITHER (I) AS A KINSHIP FOSTER CHILD PURSUANT TO
8 REGULATIONS OF THE OFFICE OF CHILDREN AND FAMILY SERVICES OR (II) AS A
9 FOSTER CHILD AND WHO HAS BEEN PLACED BY THE SOCIAL SERVICES OFFICIAL OR
10 OTHER AUTHORIZED AGENCY IN THE HOME OF A RELATIVE WITHIN THE THIRD
11 DEGREE;
12 B. "KINSHIP FOSTER PARENT" SHALL MEAN A FOSTER PARENT WHO IS APPROVED
13 OR CERTIFIED PURSUANT TO SECTION THREE HUNDRED SEVENTY-EIGHT OF THE
14 SOCIAL SERVICES LAW AND WHO IS CARING FOR A CHILD WHO IS RELATED WITHIN
15 THE THIRD DEGREE.
16 2. PETITION. A KINSHIP FOSTER PARENT OR A SOCIAL SERVICES OFFICIAL MAY
17 FILE A PETITION WITH THE FAMILY COURT WHICH PLACED THE CHILD PURSUANT TO
18 SECTION ONE THOUSAND FIFTY-FIVE OF THIS ARTICLE TO HAVE THE KINSHIP
19 FOSTER PARENT APPOINTED AS KINSHIP GUARDIAN FOR THE CHILD. THE PETITION
20 SHALL ALLEGE THAT THE CHILD WAS PLACED, THAT MORE THAN FIFTEEN MONTHS
21 HAVE PASSED SINCE THE DATE OF THE ORDER PLACING THE CHILD, THAT THE
22 PARENTS OF THE CHILD ARE PRESENTLY AND FOR THE FORESEEABLE FUTURE UNABLE
23 TO PROVIDE PROPER AND ADEQUATE CARE FOR THE CHILD, NOTWITHSTANDING THE
24 AUTHORIZED AGENCY'S DILIGENT EFFORTS TO ENCOURAGE AND STRENGTHEN THE

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

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1 PARENTAL RELATIONSHIP, THAT THE PROSPECTIVE KINSHIP GUARDIANS CONSENT TO
2 THE APPOINTMENT AND THAT THE CHILD HAS RESIDED WITH THEM FOR MORE THAN
3 EIGHTEEN MONTHS, AND THAT IT WOULD BE IN THE BEST INTERESTS OF THE CHILD
4 FOR THE PETITION TO BE GRANTED.

5 3. NOTICE. NOTICE OF THE PETITION AND A COPY OF THE PETITION SHALL BE
6 SERVED UPON THE SOCIAL SERVICES OFFICIAL WITH WHOM THE CHILD IS PLACED,
7 THE PARENTS OF THE CHILD, THE KINSHIP FOSTER PARENTS OF THE CHILD, AND
8 THE LAW GUARDIAN OF THE CHILD, EACH OF WHOM SHALL BE PARTIES TO THE
9 PROCEEDING.

10 4. HEARING AND DETERMINATION. IF THE COURT FINDS THAT THE ELEMENTS OF
11 THE PETITION HAVE BEEN PROVEN BY A FAIR PREPONDERANCE OF THE EVIDENCE,
12 OR UPON THE CONSENT OF ALL PARTIES, THE COURT SHALL GRANT THE PETITION.

13 5. ORDERS. AN ORDER APPOINTING A PERSON AS A KINSHIP GUARDIAN SHALL
14 AWARD CUSTODY OF THE CHILD TO THE KINSHIP GUARDIAN. A KINSHIP GUARDIAN
15 SHALL HAVE THE SAME AUTHORITY AS A PARENT TO CONSENT ON BEHALF OF A
16 CHILD, EXCEPT THAT A KINSHIP GUARDIAN SHALL NOT CONSENT TO THE ADOPTION
17 OR SURRENDER OF A CHILD.

18 6. MAINTENANCE SUBSIDY. THE SOCIAL SERVICES OFFICIAL WITH WHOM THE
19 CHILD WAS PLACED SHALL MAKE MONTHLY PAYMENTS TO THE KINSHIP GUARDIAN AS
20 IF THE CHILD HAD BEEN PLACED UNDER SECTIONS FOUR HUNDRED FIFTY-THREE AND
21 FOUR HUNDRED FIFTY-FOUR OF THE SOCIAL SERVICES LAW, AND SUBJECT TO THE
22 PROCEDURES, LIMITATIONS, AND MINIMUM PAYMENTS OF SUCH SECTIONS.

23 7. RIGHTS OF THE PARENTS. THE APPOINTMENT OF A KINSHIP GUARDIAN SHALL
24 NOT AFFECT OR IMPAIR THE VISITATION RIGHTS OF A PARENT.

25 8. VACATING ORDERS. A PARENT MAY APPLY FOR AN ORDER VACATING THE
26 APPOINTMENT OF THE KINSHIP GUARDIAN. THE COURT SHALL VACATE THE
27 APPOINTMENT AND AWARD CUSTODY OF THE CHILD TO THE PARENT UPON A SHOWING
28 THAT THE PARENT IS ABLE TO PROVIDE PROPER AND ADEQUATE CARE FOR THE
29 CHILD AND ONE OR MORE OF THE FOLLOWING CONDITIONS EXIST:

30 A. THE KINSHIP GUARDIAN IS UNFIT;

31 B. THE KINSHIP GUARDIAN HAS NEGLECTED HIS OR HER DUTIES;

32 C. THE KINSHIP GUARDIAN IS UNWILLING OR UNABLE TO CONTINUE THE
33 APPOINTMENT; OR

34 D. THE RELATIONSHIP BETWEEN THE KINSHIP GUARDIAN AND THE CHILD IS NO
35 LONGER IN THE BEST INTEREST OF THE CHILD.

36 S 2. This act shall take effect April 1, 2012.