

1538--A

2011-2012 Regular Sessions

I N S E N A T E

January 10, 2011

Introduced by Sens. SKELOS, BALL -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- recommitted to the Committee on Children and Families 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 family court act and the domestic relations law, in relation to abandoned infants

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

1 Section 1. Section 1012 of the family court act is amended by adding
2 a new subdivision (f-1) to read as follows:
3 (F-1) A CHILD IS AN "ABANDONED INFANT" WHEN THE COURT ENTERS AN ORDER
4 PURSUANT TO SECTION ONE THOUSAND FIFTY-ONE-A OF THIS ARTICLE THAT SUCH
5 CHILD IS NOT MORE THAN THIRTY DAYS OLD AND WHO HAS BEEN LEFT BY HIS OR
6 HER PARENT IN A MANNER WHICH INDICATES INTENT TO SURRENDER AND RELIN-
7 QUISH ALL RESPONSIBILITY FOR THE CARE OF SUCH CHILD.
8 S 2. Paragraph (ii) of subdivision (f) of section 1012 of the family
9 court act, as amended by chapter 666 of the laws of 1976, is amended to
10 read as follows:
11 (ii) who has been abandoned, in accordance with the definition and
12 other criteria set forth in subdivision five of section three hundred
13 eighty-four-b of the social services law, by his OR HER parents or other
14 person legally responsible for his OR HER care, BUT SHALL NOT INCLUDE AN
15 ABANDONED INFANT AS DEFINED IN SUBDIVISION (F-1) OF THIS SECTION.
16 S 3. Subdivision (j) of section 1012 of the family court act, as
17 amended by section 3 of part B of chapter 3 of the laws of 2005, is
18 amended to read as follows:
19 (j) "Aggravated circumstances" means where a child has been either
20 severely or repeatedly abused, as defined in subdivision eight of
21 section three hundred eighty-four-b of the social services law; OR WHERE
22 A CHILD HAS BEEN DETERMINED TO BE AN ABANDONED INFANT PURSUANT TO

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

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1 SECTION ONE THOUSAND FIFTY-ONE-A OF THIS ARTICLE; or where a child has
2 subsequently been found to be an abused child, as defined in paragraph
3 (i) or (iii) of subdivision (e) of this section, within five years after
4 return home following placement in foster care as a result of being
5 found to be a neglected child, as defined in subdivision (f) of this
6 section, provided that the respondent or respondents in each of the
7 foregoing proceedings was the same; or where the court finds by clear
8 and convincing evidence that the parent of a child in foster care has
9 refused and has failed completely, over a period of at least six months
10 from the date of removal, to engage in services necessary to eliminate
11 the risk of abuse or neglect if returned to the parent, and has failed
12 to secure services on his or her own or otherwise adequately prepare for
13 the return home and, after being informed by the court that such an
14 admission could eliminate the requirement that the local department of
15 social services provide reunification services to the parent, the parent
16 has stated in court under oath that he or she intends to continue to
17 refuse such necessary services and is unwilling to secure such services
18 independently or otherwise prepare for the child's return home;
19 provided, however, that if the court finds that adequate justification
20 exists for the failure to engage in or secure such services, including
21 but not limited to a lack of child care, a lack of transportation, and
22 an inability to attend services that conflict with the parent's work
23 schedule, such failure shall not constitute an aggravated circumstance;
24 or where a court has determined a child [five] THIRTY days old or young-
25 er was abandoned by a parent with an intent to wholly abandon such child
26 and with the intent that the child be safe from physical injury and
27 cared for in an appropriate manner.

28 S 4. Section 1042 of the family court act, as amended by chapter 41 of
29 the laws of 2010, 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. The parent or other
34 person legally responsible for the child's care shall be served with a
35 copy of the order of disposition with written notice of its entry pursu-
36 ant to section one thousand thirty-six of this article. Within one year
37 of such service or substituted service pursuant to section one thousand
38 thirty-six of this article, the parent or other person legally responsi-
39 ble for the child's care may move to vacate the order of disposition and
40 schedule a rehearing. Such motion shall be granted on an affidavit show-
41 ing such relationship or responsibility and a meritorious defense to the
42 petition, unless THE CHILD HAS BEEN DECLARED AN ABANDONED INFANT PURSU-
43 ANT TO SECTION ONE THOUSAND FIFTY-ONE-A OF THIS ARTICLE AND THE PARENTS
44 HAVE FAILED TO ASSERT A CLAIM OF CUSTODY WITHIN THE TIME PERIOD SET
45 FORTH IN SUCH SECTION, OR the court finds that the parent or other
46 person willfully refused to appear at the hearing, in which case the
47 court may deny the motion.

48 S 5. Paragraph (ii) of subdivision (b) of section 1055 of the family
49 court act, as amended by section 18 of part A of chapter 3 of the laws
50 of 2005, is amended to read as follows:

51 (ii) (A) Upon placing a child under the age of one, who has been aban-
52 doned AS DEFINED IN PARAGRAPH (II) OF SUBDIVISION (F) OF SECTION ONE
53 THOUSAND TWELVE OF THIS ARTICLE, with a local commissioner of social
54 services, the court shall, where either of the parents do not appear
55 after due notice, include in its order of disposition pursuant to
56 section one thousand fifty-two of this part, a direction that such

1 commissioner shall promptly commence a diligent search to locate the
2 child's non-appearing parent or parents or other known relatives who are
3 legally responsible for the child, and to commence a proceeding to
4 commit the guardianship and custody of such child to an authorized agen-
5 cy pursuant to section three hundred eighty-four-b of the social
6 services law, six months from the date that care and custody of the
7 child was transferred to the commissioner, unless there has been commu-
8 nication and visitation between such child and such parent or parents or
9 other known relatives or persons legally responsible for the child. In
10 addition to such diligent search the local commissioner of social
11 services shall provide written notice to the child's parent or parents
12 or other known relatives or persons legally responsible as provided for
13 in this paragraph. Such notice shall be served upon such parent or
14 parents or other known relatives or persons legally responsible in the
15 manner required for service of process pursuant to section six hundred
16 seventeen of this act. Information regarding such diligent search,
17 including, but not limited to, the name, last known address, social
18 security number, employer's address and any other identifying informa-
19 tion to the extent known regarding the non-appearing parent, shall be
20 recorded in the uniform case record maintained pursuant to section four
21 hundred nine-f of the social services law.

22 (B) AN ABANDONED INFANT, AS DEFINED IN SUBDIVISION (F-ONE) OF SECTION
23 ONE THOUSAND TWELVE OF THIS ARTICLE, SHALL NOT BE SUBJECT TO THE
24 REQUIREMENTS OF SUBPARAGRAPH (A) OF THIS PARAGRAPH.

25 S 6. The family court act is amended by adding a new section 1031-a to
26 read as follows:

27 S 1031-A. ABANDONED INFANTS. (A) A PROCEEDING TO DETERMINE WHETHER A
28 CHILD IS AN ABANDONED INFANT SHALL BE COMMENCED WITHIN SIX BUSINESS DAYS
29 OF A LOCAL COMMISSIONER OF SOCIAL SERVICES RECEIPT OF NOTIFICATION THAT
30 A CHILD ALLEGED TO BE AN ABANDONED INFANT HAS BEEN FOUND IN THE JURIS-
31 DICTION OF THE LOCAL SOCIAL SERVICES AGENCY.

32 (B) THE PETITION SHALL ALLEGE THE FACTS SURROUNDING THE HISTORY AND
33 CURRENT CUSTODY OF THE CHILD, INCLUDING BUT NOT LIMITED TO:

34 (I) THE LOCATION THE CHILD WAS SURRENDERED OR ABANDONED;

35 (II) THE DATE OF SUCH OCCURRENCE;

36 (III) THE AFFIDAVIT OF THE LICENSED PHYSICIAN CERTIFYING SUCH PHYSI-
37 CIAN'S DETERMINATION AS TO THE AGE OF THE INFANT;

38 (IV) THE NAMES AND ADDRESSES OF ANY PROSPECTIVE FOSTER CARE OR ADOP-
39 TIVE HOMES; AND

40 (V) ANY OTHER INFORMATION THAT WOULD FACILITATE THE COURT'S DETERMI-
41 NATION.

42 (C) THE PETITION SHALL ALSO MAKE AN APPLICATION PURSUANT TO SECTION
43 ONE THOUSAND THIRTY-NINE-B OF THIS PART FOR THE COURT TO DETERMINE THAT
44 REASONABLE EFFORTS TO RETURN THE CHILD TO HIS OR HER HOME ARE NOT
45 REQUIRED BASED UPON A FINDING THAT THE CHILD HAS BEEN DECLARED AN ABAN-
46 DONED INFANT.

47 (D) THE COURT SHALL APPOINT AN ATTORNEY FOR THE CHILD TO REPRESENT THE
48 INTERESTS OF ANY CHILD NAMED IN A PETITION WHO IS ALLEGED TO BE AN ABAN-
49 DONED INFANT.

50 (E) NO PROCEEDING MAY CONTINUE UNDER THIS SECTION UNLESS THE COURT
51 ENTERS A FINDING:

52 (I) THAT THE CHILD WAS NOT MORE THAN THIRTY DAYS OLD AT THE TIME OF
53 THE ABANDONMENT; AND

54 (II) THAT THE PARENT LEFT THE CHILD IN A MANNER WHICH INDICATES INTENT
55 TO SURRENDER AND RELINQUISH ALL RESPONSIBILITY FOR THE CARE OF SUCH
56 CHILD.

(F) ALL AUTHORITY GRANTED TO THE LOCAL COMMISSIONER OF SOCIAL SERVICES RELATING TO THE CARE AND CUSTODY OF THE INFANT PURSUANT TO THE SOCIAL SERVICES LAW SHALL CONTINUE UNTIL FURTHER ORDER OF THE COURT.

S 7. The family court act is amended by adding a new section 1051-a to read as follows:

S 1051-A. SUSTAINING OR DISMISSING A PETITION ALLEGING AN ABANDONED INFANT. (A) IF FACTS SUFFICIENT TO SUSTAIN A PETITION UNDER SECTION ONE THOUSAND THIRTY-ONE-A OF THIS ARTICLE ARE ESTABLISHED, THE COURT SHALL ENTER AN ORDER FINDING THAT THE CHILD IS AN ABANDONED INFANT AND SHALL STATE IN ITS ORDER:

(I) THAT, WITHIN A REASONABLE MEDICAL CERTAINTY, THE CHILD WAS NOT MORE THAN THIRTY DAYS OLD WHEN HE OR SHE WAS ABANDONED;

(II) THE DATE THE CHILD WAS BORN, WITHIN A REASONABLE MEDICAL CERTAINTY;

(III) THAT THE CHILD WAS LEFT IN A MANNER THAT INDICATED HIS OR HER PARENT'S INTENT TO RELINQUISH RESPONSIBILITY FOR AND RIGHT TO THE CARE AND CUSTODY OF SUCH CHILD;

(IV) THAT BASED UPON THE FINDINGS OF PARAGRAPHS (I) AND (III) OF THIS SUBDIVISION, THE CHILD IS AN ABANDONED INFANT PURSUANT TO SUBDIVISION (F-ONE) OF SECTION ONE THOUSAND TWELVE OF THIS ARTICLE; AND

(V) THAT BASED UPON SUCH FINDING THAT THE CHILD IS AN ABANDONED INFANT, REASONABLE EFFORTS TO RETURN THE CHILD TO HIS OR HER HOME ARE NOT REQUIRED.

(B) (I) IF FACTS SUFFICIENT TO SUSTAIN THE PETITION UNDER SECTION ONE THOUSAND THIRTY-ONE-A OF THIS ARTICLE ARE NOT ESTABLISHED DUE TO THE CHILD BEING MORE THAN THIRTY DAYS OLD AT THE TIME OF ABANDONMENT THE COURT SHALL CONVERT THE PETITION TO A PROCEEDING TO DETERMINE NEGLECT PURSUANT TO SECTION ONE THOUSAND THIRTY-ONE OF THIS ARTICLE AND SHALL STATE ON THE RECORD THE GROUNDS FOR THE CONVERSION. TEMPORARY CUSTODY OF THE CHILD SHALL CONTINUE UNTIL FURTHER ORDER OF THE COURT. THE COURT SHALL ALSO REFER THE MATTER TO THE APPROPRIATE DISTRICT ATTORNEY'S OFFICE AND DIRECT THE LOCAL COMMISSIONER OF SOCIAL SERVICES TO ORIGINATE A PROCEEDING UNDER SECTION ONE THOUSAND THIRTY-ONE OF THIS ARTICLE WITHIN SEVEN DAYS.

(II) IF THE FACTS SUFFICIENT TO SUSTAIN THE PETITION UNDER THIS SECTION ARE NOT ESTABLISHED DUE TO AN INABILITY TO DETERMINE THE INTENT OF THE PARENT OR PARENTS THEN THE COURT SHALL CONVERT THE PETITION TO A PROCEEDING TO DETERMINE NEGLECT PURSUANT TO SECTION ONE THOUSAND THIRTY-ONE OF THIS ARTICLE AND SHALL STATE ON THE RECORD THE GROUNDS FOR THE CONVERSION. TEMPORARY CUSTODY OF THE CHILD SHALL CONTINUE UNTIL FURTHER ORDER OF THE COURT. FOR THE PURPOSES OF THIS PARAGRAPH, ABANDONMENT IN THE MANNER PRESCRIBED BY SECTION 260.00 OF THE PENAL LAW SHALL BE PRESUMPTIVE EVIDENCE OF INTENT TO SURRENDER AND RELINQUISH ALL RESPONSIBILITY FOR THE CARE OF SUCH CHILD.

(C) THE COURT SHALL COMMENCE A DISPOSITIONAL HEARING IMMEDIATELY UPON COMPLETION OF THE FACT-FINDING HEARING. AT THE CONCLUSION OF SUCH DISPOSITIONAL HEARING THE COURT SHALL ENTER AN ORDER OF DISPOSITION:

(I) PLACING THE CHILD IN THE CUSTODY OF THE LOCAL COMMISSIONER OF SOCIAL SERVICES IN ACCORD WITH THE PROVISIONS OF SECTION ONE THOUSAND FIFTY-FIVE OF THIS PART, UPON A DETERMINATION THAT:

(A) CONTINUATION IN THE CHILD'S HOME WOULD BE CONTRARY TO THE BEST INTERESTS OF THE CHILD; AND

(B) WHERE THE COURT HAS DETERMINED THAT THE CHILD IS AN ABANDONED INFANT, REASONABLE EFFORTS TO PREVENT OR ELIMINATE THE NEED FOR REMOVING THE CHILD FROM HIS OR HER HOME OR TO MAKE IT POSSIBLE FOR THE CHILD TO RETURN SAFELY TO HIS OR HER HOME ARE NOT REQUIRED;

(II) REQUIRING THE LOCAL COMMISSIONER OF SOCIAL SERVICES TO COMMENCE A PROCEEDING TO COMMIT THE GUARDIANSHIP AND CUSTODY OF SUCH CHILD TO AN AUTHORIZED AGENCY PURSUANT TO SECTION THREE HUNDRED EIGHTY-FOUR-B OF THE SOCIAL SERVICES LAW IN SIXTY DAYS, PROVIDED THAT NO PETITION HAS BEEN BROUGHT PURSUANT TO SECTION ONE THOUSAND SIXTY-ONE-A OF THIS ARTICLE. UPON RECEIVING SUCH PETITION, THE COURT SHALL SCHEDULE A DATE CERTAIN FOR THE FACT-FINDING AND DISPOSITIONAL HEARING REGARDING SUCH PETITION WHICH SHALL BE NINETY DAYS FROM THE DATE THAT THE CHILD WAS FOUND TO BE AN ABANDONED INFANT PURSUANT TO THIS SECTION;

(III) REQUIRING THE LOCAL COMMISSIONER OF SOCIAL SERVICES TO CAUSE NOTICE OF THE PROCEEDING INSTITUTED PURSUANT TO SECTION THREE HUNDRED EIGHTY-FOUR-B OF THE SOCIAL SERVICES LAW TO BE PUBLISHED IN ACCORDANCE WITH THE PROVISIONS OF RULE THREE HUNDRED SIXTEEN OF THE CIVIL PRACTICE LAW AND RULES IN THE COUNTY IN WHICH SUCH CHILD WAS FOUND. THE NOTICE SHALL STATE:

(A) THE DATE, TIME AND PURPOSE OF THE PROCEEDING;

(B) THE DATE, TIME AND PLACE THAT THE ABANDONED INFANT WAS FOUND;

(C) A DESCRIPTION OF THE INFANT INCLUDING ITS APPROXIMATE DATE OF BIRTH;

(D) THAT UPON FAILURE TO APPEAR, ALL PARENTAL RIGHTS OF THE PARENTS OF SUCH ABANDONED INFANT SHALL BE TERMINATED;

(E) THAT A PARENT'S FAILURE TO APPEAR SHALL CONSTITUTE A DENIAL OF HIS OR HER INTEREST IN THE CHILD, WHICH DENIAL SHALL RESULT, WITHOUT FURTHER NOTICE, IN THE COMMITMENT OF THE CUSTODY AND GUARDIANSHIP OF THE CHILD TO THE LOCAL COMMISSIONER OF SOCIAL SERVICES AND IN THE CHILD'S ADOPTION; AND

(F) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE PERSON DESIGNATED BY THE LOCAL COMMISSIONER OF SOCIAL SERVICES TO CONTACT FOR INFORMATION REGARDING SUCH CHILD.

S 8. The family court act is amended by adding a new section 1061-a to read as follows:

S 1061-A. CUSTODY CLAIM BY PARENT OF AN ABANDONED INFANT. (A) AT ANY TIME PRIOR TO THE CHILD BEING FREED FOR ADOPTION EITHER PARENT MAY INSTITUTE AN ACTION TO ASSERT A CLAIM FOR CUSTODY OF THE CHILD DECLARED AN ABANDONED INFANT PURSUANT TO SECTION ONE THOUSAND FIFTY-ONE-A OF THIS ARTICLE. SUCH PROCEEDING SHALL BE BROUGHT WITHIN THE COUNTY WHERE SUCH INFANT IS FOUND. SUCH PROCEEDING SHALL ORIGINATE BY PETITION AND SHALL NAME THE LOCAL COMMISSIONER OF SOCIAL SERVICES, AND BOTH THE PARENTS, IF KNOWN. IN THE EVENT THE WHEREABOUTS OF EITHER PARENT IS UNKNOWN THE PETITION SHALL SO STATE AND THE COURT MAY PROCEED IN SAID PARENT'S ABSENCE. A FILING OF A PETITION UNDER THIS SECTION SHALL TOLL THE TIME FOR FREEING THE CHILD FOR ADOPTION AS PROVIDED FOR IN SUBDIVISION (A) OF SECTION ONE THOUSAND FIFTY-ONE-A OF THIS ARTICLE. NOTICE SHALL BE SERVED UPON THE ATTORNEY FOR THE CHILD APPOINTED PURSUANT TO SUBDIVISION (D) OF SECTION ONE THOUSAND THIRTY-ONE-A OF THIS ARTICLE. IN DETERMINING CUSTODY OF THE INFANT THE COURT SHALL CONSIDER THE BEST INTEREST OF THE CHILD. PENDING A DETERMINATION IN THIS MATTER, THE INFANT SHALL REMAIN IN THE CARE AND CUSTODY OF THE LOCAL COMMISSIONER OF SOCIAL SERVICES UNLESS THE COURT DIRECTS OTHERWISE.

(B) IN THE EVENT THAT PETITIONER WHO ALLEGES TO BE A PUTATIVE FATHER, RECITES IN A PETITION, FILED IN THE COUNTY WHEREIN HE RESIDES, FACTS THAT ALLEGE HE IS THE FATHER OF AN INFANT WHOSE WHEREABOUTS ARE UNKNOWN DUE TO THE CONCEALMENT AND PROBABLE ABANDONMENT OF THE RESPONDENT MOTHER, THE PETITION MAY BE SERVED UPON THE MOTHER SEEKING AS ITS SOLE REMEDY, THE LOCATION WHERE THE INFANT WAS ABANDONED. RESPONDENT MOTHER MAY THEN AVOID APPEARING IN COURT BY FILING A SWORN STATEMENT WITHIN TEN

1 DAYS DISCLOSING THE LOCATION THE CHILD WAS ABANDONED. A COURT MAY
2 COMPEL, BY THE POWERS OF CONTEMPT, THE DISCLOSURE OF THE INFANT'S WHERE-
3 ABOUTS. UPON DISCLOSURE OF THE INFANT'S LOCATION THE PETITION TO ASSERT
4 THE CLAIM OF CUSTODY SHALL BE TRANSFERRED TO THE COUNTY WHEREIN THE
5 INFANT IS RESIDING FOR FURTHER PROCEEDINGS.

6 (C) THE RECORDS AND DISCOVERY PROCEDURES SET FORTH IN SECTION ONE
7 THOUSAND THIRTY-EIGHT OF THIS ARTICLE SHALL BE APPLICABLE TO A PROCEED-
8 ING UNDER THIS SECTION.

9 (D) FAILURE OF A PARENT TO ASSERT A CLAIM FOR CUSTODY UNDER THIS
10 SECTION WITHIN THE SPECIFIED TIME PERIOD SHALL IRREVOCABLY FREE THE
11 CHILD FOR ADOPTION AND ANY ALLEGED PARENT WILL LOSE ALL RIGHTS AT THE
12 END OF THE NINETY DAY PERIOD WITHOUT FURTHER NOTICE.

13 S 9. Paragraph (e) of subdivision 2 of section 111 of the domestic
14 relations law, as amended by chapter 375 of the laws of 1997, is amended
15 and a new paragraph (f) is added to read as follows:

16 (e) who has executed an instrument, which shall be irrevocable, deny-
17 ing the paternity of the child, such instrument having been executed
18 after conception and acknowledged or proved in the manner required to
19 permit the recording of a deed[.]; OR

20 (F) WHERE SUCH CHILD IS DETERMINED TO BE AN ABANDONED INFANT PURSUANT
21 TO SECTION ONE THOUSAND THIRTY-ONE-A OF THE FAMILY COURT ACT.

22 S 10. This act shall take effect on the sixtieth day after it shall
23 have become a law.