

5694--A

2011-2012 Regular Sessions

I N   S E N A T E

June 10, 2011

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Introduced by Sen. SALAND -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the family court act and the social services law, in relation to procedures for destitute children in the family court and to repeal section 1059 of the family court act, relating to abandoned children

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

1     Section 1. Subdivision (c) of section 115 of the family court act, as  
2 amended by section 1 of part A of chapter 3 of the laws of 2005, is  
3 amended to read as follows:  
4     (c) The family court has such other jurisdiction as is provided by  
5 law, including but not limited to: proceedings concerning adoption and  
6 custody of children, as set forth in parts two and three of article six  
7 of this act; proceedings concerning the uniform interstate family  
8 support act, as set forth in article five-B of this act; proceedings  
9 concerning children in foster care and care and custody of children, as  
10 set forth in sections three hundred fifty-eight-a and three hundred  
11 eighty-four-a of the social services law and article ten-A of this act;  
12 proceedings concerning FORMER FOSTER CHILDREN AS SET FORTH IN ARTICLE  
13 TEN-B OF THIS ACT; PROCEEDINGS CONCERNING DESTITUTE CHILDREN, AS SET  
14 FORTH IN ARTICLE TEN-C OF THIS ACT; PROCEEDINGS CONCERNING guardianship  
15 and custody of children by reason of the death of, or abandonment or  
16 surrender by, the parent or parents, as set forth in sections three  
17 hundred eighty-three-c, three hundred eighty-four and paragraphs (a) and  
18 (b) of subdivision four of section three hundred eighty-four-b of the  
19 social services law; proceedings concerning standby guardianship and  
20 guardianship of the person as set forth in part four of article six of

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

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1 this act and article seventeen of the surrogate's court procedure act;  
2 and proceedings concerning the interstate compact on juveniles as set  
3 forth in chapter one hundred fifty-five of the laws of nineteen hundred  
4 fifty-five, as amended, the interstate compact on the placement of chil-  
5 dren, as set forth in section three hundred seventy-four-a of the social  
6 services law, and the uniform child custody jurisdiction and enforcement  
7 act, as set forth in article five-A of the domestic relations law.

8 S 2. Subdivision (a) of section 249 of the family court act, as  
9 amended by chapter 29 of the laws of 2011, is amended to read as  
10 follows:

11 (a) In a proceeding under article three, seven, ten [or], ten-A, TEN-B  
12 OR TEN-C of this act or where a revocation of an adoption consent is  
13 opposed under section one hundred fifteen-b of the domestic relations  
14 law or in any proceeding under section three hundred fifty-eight-a,  
15 three hundred eighty-three-c, three hundred eighty-four or three hundred  
16 eighty-four-b of the social services law or when a minor is sought to be  
17 placed in protective custody under section one hundred fifty-eight of  
18 this act or in any proceeding where a minor is detained under or  
19 governed by the interstate compact for juveniles established pursuant to  
20 section five hundred one-e of the executive law, the family court shall  
21 appoint an attorney to represent a minor who is the subject of the  
22 proceeding or who is sought to be placed in protective custody, if inde-  
23 pendent legal representation is not available to such minor. In any  
24 proceeding to extend or continue the placement of a juvenile delinquent  
25 or person in need of supervision pursuant to section seven hundred  
26 fifty-six or 353.3 of this act or any proceeding to extend or continue a  
27 commitment to the custody of the commissioner of mental health or the  
28 commissioner of people with developmental disabilities pursuant to  
29 section 322.2 of this act, the court shall not permit the respondent to  
30 waive the right to be represented by counsel chosen by the respondent,  
31 respondent's parent, or other person legally responsible for the  
32 respondent's care, or by assigned counsel. In any other proceeding in  
33 which the court has jurisdiction, the court may appoint an attorney to  
34 represent the child, when, in the opinion of the family court judge,  
35 such representation will serve the purposes of this act, if independent  
36 legal counsel is not available to the child. The family court on its own  
37 motion may make such appointment.

38 S 3. Paragraphs (i) and (iv) of subdivision (a) of section 262 of the  
39 family court act, paragraph (i) as amended by section 3 of part A of  
40 chapter 3 of the laws of 2005 and paragraph (iv) as amended by chapter  
41 437 of the laws of 2006, are amended to read as follows:

42 (i) the respondent in any proceeding under article ten [or], article  
43 ten-A OR ARTICLE TEN-C of this act and the petitioner in any proceeding  
44 under part eight of article ten of this act;

45 (iv) the parent OR OTHER PERSON LEGALLY RESPONSIBLE, foster parent, or  
46 other person having physical or legal custody of the child in any  
47 proceeding under article ten [or], ten-A, TEN-B OR TEN-C of this act or  
48 section three hundred fifty-eight-a, three hundred eighty-four or three  
49 hundred eighty-four-b of the social services law, and a non-custodial  
50 parent or grandparent served with notice pursuant to paragraph (e) of  
51 subdivision two of section three hundred eighty-four-a of the social  
52 services law;

53 S 4. Section 1059 of the family court act is REPEALED.

54 S 5. Section 1086 of the family court act, as added by section 27 of  
55 part A of chapter 3 of the laws of 2005, is amended to read as follows:

1 S 1086. Purpose. The purpose of this article is to establish uniform  
2 procedures for permanency hearings for all children who are placed in  
3 foster care pursuant to section three hundred fifty-eight-a, three  
4 hundred eighty-four or three hundred eighty-four-a of the social  
5 services law or pursuant to section one thousand twenty-two, one thou-  
6 sand twenty-seven, [or] one thousand fifty-two, ONE THOUSAND  
7 EIGHTY-NINE, ONE THOUSAND NINETY-ONE, ONE THOUSAND NINETY-FOUR OR ONE  
8 THOUSAND NINETY-FIVE of this act; children who are directly placed with  
9 a relative pursuant to section one thousand seventeen or one thousand  
10 fifty-five of this act; and children who are freed for adoption. It is  
11 meant to provide children placed out of their homes timely and effective  
12 judicial review that promotes permanency, safety and well-being in their  
13 lives.

14 S 6. Subdivision (a) of section 1087 of the family court act, as  
15 amended by chapter 342 of the laws of 2010, is amended to read as  
16 follows:

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

32 S 7. Section 1088 of the family court act, as separately amended by  
33 chapters 41 and 342 of the laws of 2010, is amended to read as follows:

34 S 1088. Continuing court jurisdiction. If a child is placed pursuant  
35 to section three hundred fifty-eight-a, three hundred eighty-four, or  
36 three hundred eighty-four-a of the social services law, or pursuant to  
37 section one thousand seventeen, one thousand twenty-two, one thousand  
38 twenty-seven [or], one thousand fifty-two, ONE THOUSAND EIGHTY-NINE, ONE  
39 THOUSAND NINETY-ONE, ONE THOUSAND NINETY-FOUR OR ONE THOUSAND  
40 NINETY-FIVE of this act, or directly placed with a relative pursuant to  
41 section one thousand seventeen or one thousand fifty-five of this act;  
42 or if the child is freed for adoption pursuant to section three hundred  
43 eighty-three-c, three hundred eighty-four or three hundred eighty-four-b  
44 of the social services law, the case shall remain on the court's calen-  
45 dar and the court shall maintain jurisdiction over the case until the  
46 child is discharged from placement and all orders regarding supervision,  
47 protection or services have expired. The court shall rehear the matter  
48 whenever it deems necessary or desirable, or upon motion by any party  
49 entitled to notice in proceedings under this article, or by the attorney  
50 for the child, and whenever a permanency hearing is required by this  
51 article. While the court maintains jurisdiction over the case, the  
52 provisions of section one thousand thirty-eight of this act shall  
53 continue to apply. The court shall also maintain jurisdiction over a  
54 case for purposes of hearing a motion to permit a former foster care  
55 youth under the age of twenty-one who was discharged from foster care  
56 due to a failure to consent to continuation of placement to return to

1 the custody of the local commissioner of social services or other offi-  
2 cer, board or department authorized to receive children as public charg-  
3 es.

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

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

30 S 9. Subdivision (a) of section 1090 of the family court act, as sepa-  
31 rately amended by chapters 41 and 342 of the laws of 2010, is amended to  
32 read as follows:

33 (a) If an attorney for the child has been appointed by the family  
34 court in a proceeding pursuant to THIS ARTICLE OR section three hundred  
35 fifty-eight-a, three hundred eighty-three-c, three hundred eighty-four,  
36 or three hundred eighty-four-b of the social services law, or article  
37 ten, TEN-B OR TEN-C of this act, the appointment of the attorney for the  
38 child shall continue without further court order or appointment, unless  
39 another appointment of an attorney for the child has been made by the  
40 court, until the child is discharged from placement and all orders  
41 regarding supervision, protection or services have expired. The attorney  
42 FOR THE CHILD shall also represent the child without further order or  
43 appointment in any proceedings under article ten-B OR TEN-C of this act.  
44 All notices, reports and motions required by law shall be provided to  
45 [the child's] SUCH attorney. The [child's] attorney FOR THE CHILD may be  
46 relieved of his or her representation upon application to the court for  
47 termination of the appointment. Upon approval of the application, the  
48 court shall immediately appoint another attorney to whom all notices,  
49 reports, and motions required by law shall be provided.

50 S 10. The family court act is amended by adding a new article 10-C to  
51 read as follows:

52 ARTICLE 10-C  
53 DESTITUTE CHILDREN

54 SECTION 1092. DEFINITIONS.

55 1093. ORIGINATING PROCEEDINGS.

1094. INITIAL APPEARANCE AND PRELIMINARY PROCEEDINGS.

1095. FACT FINDING AND DISPOSITION.

S 1092. DEFINITIONS. WHEN USED IN THIS ARTICLE UNLESS THE SPECIFIC CONTEXT INDICATES OTHERWISE:

(A) "DESTITUTE CHILD" SHALL MEAN A CHILD WHO IS NOT SUBJECT TO ARTICLE TEN OF THIS ACT, IS WITHOUT A PARENT OR PERSON LEGALLY RESPONSIBLE TO SUFFICIENTLY CARE FOR HIM OR HER, AND IS IN A STATE OF WANT OR SUFFERING DUE TO LACK OF SUFFICIENT FOOD, CLOTHING, SHELTER, OR MEDICAL OR SURGICAL CARE.

(B) "PARENT" SHALL MEAN ANY LIVING BIOLOGICAL OR ADOPTIVE PARENT OF THE CHILD WHOSE RIGHTS HAVE NOT BEEN TERMINATED OR SURRENDERED.

(C) "PERSON LEGALLY RESPONSIBLE" SHALL MEAN THE CUSTODIAN OR GUARDIAN OF THE DESTITUTE CHILD OR ANY OTHER ADULT RESPONSIBLE FOR THE CARE OF SUCH CHILD AT THE RELEVANT TIME.

(D) "PERMANENCY HEARING" SHALL MEAN A HEARING IN ACCORDANCE WITH ARTICLE TEN-A OF THIS ACT, AS DEFINED IN SUBDIVISION (K) OF SECTION ONE THOUSAND TWELVE OF THIS ACT.

(E) "COMMISSIONER OF SOCIAL SERVICES" SHALL MEAN THE COMMISSIONER OF THE LOCAL DEPARTMENT OF SOCIAL SERVICES OR, IN A CITY HAVING A POPULATION OF ONE MILLION OR MORE, THE ADMINISTRATION FOR CHILDREN'S SERVICES.

S 1093. ORIGINATING PROCEEDINGS. (A) FILING OF THE PETITION. A COMMISSIONER OF SOCIAL SERVICES MAY ORIGINATE A PROCEEDING UNDER THIS ARTICLE BY FILING A PETITION ALLEGING THAT THE CHILD IS A DESTITUTE CHILD AS DEFINED BY SECTION ONE THOUSAND NINETY-TWO OF THIS ARTICLE. A COMMISSIONER OF SOCIAL SERVICES, WHO ACCEPTS THE CARE AND CUSTODY OF A CHILD APPEARING TO BE A DESTITUTE CHILD, SHALL FILE A PETITION PURSUANT TO THIS SECTION WITHIN FOURTEEN DAYS UPON ACCEPTING THE CARE AND CUSTODY OF SUCH CHILD.

(B) VENUE. A PETITION UNDER THIS ARTICLE SHALL BE FILED IN THE FAMILY COURT LOCATED IN THE COUNTY WHERE THE CHILD RESIDES OR IS DOMICILED OR WHERE THE DEPARTMENT OF SOCIAL SERVICES IS LOCATED.

(C) CONTENTS OF THE PETITION. (1) THE PETITION SHALL ALLEGE UPON INFORMATION AND BELIEF:

(I) THE MANNER, DATE AND CIRCUMSTANCE UNDER WHICH THE CHILD BECAME KNOWN TO THE PETITIONER;

(II) THE CHILD'S DATE OF BIRTH;

(III) THAT THE CHILD IS A DESTITUTE CHILD AS DEFINED IN SUBDIVISION (A) OF SECTION ONE THOUSAND NINETY-TWO OF THIS ARTICLE AND THE BASIS FOR THE ALLEGATION;

(IV) THE IDENTITY OF THE PARENT OR PARENTS OF THE CHILD IN QUESTION;

(V) WHETHER THE PARENT OR PARENTS OF THE CHILD ARE LIVING OR DECEASED;

(VI) THE WHEREABOUTS AND LAST KNOWN ADDRESS FOR THE PARENT OR PARENTS;

(VII) THE EFFORTS, IF ANY, WHICH WERE MADE PRIOR TO THE FILING OF THE PETITION TO PREVENT ANY REMOVAL OF THE CHILD FROM THE HOME AND IF SUCH EFFORTS WERE NOT MADE, THE REASONS SUCH EFFORTS WERE NOT MADE; AND

(VIII) IF THE CHILD HAD BEEN REMOVED FROM HOME PRIOR TO THE FILING OF THE PETITION, THE EFFORTS, IF ANY, WHICH WERE MADE PRIOR TO THE FILING OF THE PETITION TO ALLOW THE CHILD TO RETURN SAFELY HOME, AND IF SUCH EFFORTS WERE NOT MADE, THE REASONS SUCH EFFORTS WERE NOT MADE.

(2) UNLESS THE PARENT OR PARENTS ARE DECEASED, THE PETITION SHALL CONTAIN A NOTICE IN CONSPICUOUS PRINT PROVIDING THAT IF THE CHILD REMAINS IN FOSTER CARE FOR FIFTEEN OF THE MOST RECENT TWENTY-TWO MONTHS, THE AGENCY MAY BE REQUIRED BY LAW TO FILE A PETITION TO TERMINATE PARENTAL RIGHTS.

(D) SERVICE OF SUMMONS. (1) UPON THE FILING OF A PETITION UNDER THIS ARTICLE, IF A LIVING PARENT OR PERSON LEGALLY RESPONSIBLE FOR THE CHILD IS IDENTIFIED IN THE PETITION, THE COURT SHALL CAUSE A COPY OF THE PETITION AND A SUMMONS TO BE ISSUED THE SAME DAY THE PETITION IS FILED, REQUIRING SUCH PARENT OR PERSON LEGALLY RESPONSIBLE FOR THE CHILD TO APPEAR IN COURT ON THE RETURN DATE TO ANSWER THE PETITION.

(2) SERVICE OF A SUMMONS AND PETITION UNDER THIS ARTICLE SHALL BE MADE BY DELIVERY OF A TRUE COPY THEREOF TO THE PERSON SUMMONED AT LEAST TWENTY-FOUR HOURS BEFORE THE TIME STATED THEREIN FOR APPEARANCE.

(3) THE COURT MAY SEND PROCESS WITHOUT THE STATE IN THE SAME MANNER AND WITH THE SAME EFFECT AS PROCESS SENT WITHIN THE STATE IN THE EXERCISE OF PERSONAL JURISDICTION OVER ANY PERSON SUBJECT TO THE JURISDICTION OF THE COURT UNDER SECTION THREE HUNDRED ONE OR THREE HUNDRED TWO OF THE CIVIL PRACTICE LAW AND RULES, NOTWITHSTANDING THAT SUCH PERSON IS NOT A RESIDENT OR DOMICILIARY OF THE STATE. WHERE SERVICE IS EFFECTED ON AN OUT-OF-STATE RESPONDENT AND THE RESPONDENT DEFAULTS BY FAILING TO APPEAR TO ANSWER THE PETITION, THE COURT MAY ON ITS OWN MOTION, OR UPON APPLICATION OF ANY PARTY OR THE ATTORNEY FOR THE CHILD PROCEED TO A HEARING PURSUANT TO SECTION ONE THOUSAND NINETY-FIVE OF THIS ARTICLE.

(4) IF AFTER REASONABLE EFFORT, PERSONAL SERVICE IS NOT MADE, THE COURT MAY AT ANY STAGE IN THE PROCEEDINGS MAKE AN ORDER PROVIDING FOR SUBSTITUTED SERVICE IN THE MANNER PROVIDED FOR SUBSTITUTED SERVICE IN CIVIL PROCESS IN COURTS OF RECORD.

S 1094. INITIAL APPEARANCE AND PRELIMINARY PROCEEDINGS. (A) AT THE INITIAL APPEARANCE, THE COURT SHALL:

(1) APPOINT AN ATTORNEY TO REPRESENT THE CHILD AND, IF ENTERING AN APPEARANCE AT THE INITIAL APPEARANCE OR THEREAFTER, THE PARENT OR PARENTS OR OTHER PERSON OR PERSONS LEGALLY RESPONSIBLE;

(2) (I) IF A PARENT OR PARENTS OR OTHER PERSON OR PERSONS LEGALLY RESPONSIBLE ENTERS AN APPEARANCE, DETERMINE WHETHER THE CHILD MAY SAFELY REMAIN IN HIS OR HER OR THEIR HOME AND, IF APPROPRIATE, ORDER SERVICES TO ASSIST THE FAMILY TOWARD THAT END;

(II) DETERMINE WHETHER REMOVAL IS NECESSARY TO AVOID IMMINENT RISK TO THE CHILD'S LIFE OR HEALTH AND WHETHER IT WOULD BE CONTRARY TO THE WELFARE OF THE CHILD TO CONTINUE IN HIS OR HER OWN HOME, AND, IF SO, WHETHER THE CHILD SHOULD BE PLACED IN THE TEMPORARY CARE AND CUSTODY OF A RELATIVE OR OTHER SUITABLE PERSON OR IN THE TEMPORARY CARE AND CUSTODY OF THE COMMISSIONER OF SOCIAL SERVICES;

(III) UPON A DETERMINATION THAT THE CHILD SHOULD BE TEMPORARILY PLACED:

(A) DIRECT THE PETITIONER TO INVESTIGATE WHETHER THERE ARE ANY PARENTS OR OTHER PERSONS LEGALLY RESPONSIBLE NOT NAMED IN THE PETITION OR ANY OTHER RELATIVES OR OTHER SUITABLE PERSONS WITH WHOM THE CHILD MAY SAFELY RESIDE AND, IF SO, DIRECT THE CHILD TO RESIDE TEMPORARILY IN THEIR CARE; AND

(B) IF A RELATIVE OR OTHER SUITABLE PERSON SEEKS APPROVAL TO CARE FOR THE CHILD AS A FOSTER PARENT, DIRECT THE PETITIONER TO COMMENCE AN INVESTIGATION INTO THE HOME OF SUCH RELATIVE AND THEREAFTER APPROVE SUCH RELATIVE OR OTHER SUITABLE PERSON, IF QUALIFIED, AS A FOSTER PARENT; PROVIDED, HOWEVER, THAT IF SUCH HOME IS FOUND TO BE UNQUALIFIED FOR APPROVAL, THE PETITIONER SHALL REPORT SUCH FACT TO THE COURT FORTHWITH AND, IN THE CASE OF A RELATIVE WHO SEEKS APPROVAL TO CARE FOR THE CHILD AS A FOSTER PARENT, THE RELATIVE MAY PROCEED IN ACCORDANCE WITH SECTION ONE THOUSAND TWENTY-EIGHT-A OF THIS ACT.

(3) SET A DATE CERTAIN FOR THE FACT FINDING AND DISPOSITION HEARING PURSUANT TO SECTION ONE THOUSAND NINETY-FIVE OF THIS ARTICLE AND, IF THE

CHILD IS TEMPORARILY PLACED, SET A DATE CERTAIN FOR THE INITIAL PERMANENCY HEARING PURSUANT TO PARAGRAPH TWO OF SUBDIVISION (A) OF SECTION ONE THOUSAND EIGHTY-NINE OF THIS ACT. THE DATE CERTAIN FOR THE INITIAL PERMANENCY HEARING SHALL BE NO LATER THAN EIGHT MONTHS FROM THE DATE THE SOCIAL SERVICES OFFICIAL ACCEPTED CARE OF THE CHILD;

(4) DETERMINE WHETHER REASONABLE EFFORTS WERE MADE PRIOR TO THE PLACEMENT OF THE CHILD INTO FOSTER CARE TO PREVENT OR ELIMINATE THE NEED FOR REMOVAL OF THE CHILD FROM HIS OR HER HOME, AND IF SUCH EFFORTS WERE NOT MADE WHETHER THE LACK OF SUCH EFFORTS WERE APPROPRIATE UNDER THE CIRCUMSTANCES; DETERMINE, WHERE APPROPRIATE, IF REASONABLE EFFORTS WERE MADE TO MAKE IT POSSIBLE FOR THE CHILD TO RETURN SAFELY HOME; AND

(5) INCLUDE THE FINDINGS MADE PURSUANT TO PARAGRAPHS ONE THROUGH FOUR OF THIS SUBDIVISION IN A WRITTEN ORDER.

(B) UNLESS THERE HAS BEEN A HEARING UNDER SUBDIVISION (A) OF THIS SECTION AT WHICH THE PARENT OR PARENTS AND CHILD'S ATTORNEY APPEARED, THE PARENT OR PARENTS OF THE CHILD OR THE CHILD'S ATTORNEY MAY REQUEST A HEARING TO DETERMINE WHETHER A CHILD WHO HAS BEEN REMOVED FROM HIS OR HER HOME SHOULD BE RETURNED AND, IF SO, WHETHER SERVICES SHOULD BE ORDERED TO FACILITATE SUCH RETURN. EXCEPT FOR GOOD CAUSE SHOWN, THE HEARING SHALL BE HELD WITHIN THREE COURT DAYS OF THE REQUEST AND SHALL NOT BE ADJOURNED. THE COURT SHALL GRANT THE APPLICATION FOR RETURN OF THE CHILD UNLESS IT FINDS THAT THE RETURN PRESENTS AN IMMINENT RISK TO THE CHILD'S LIFE OR HEALTH. IF IMMINENT RISK TO THE CHILD IS FOUND, THE COURT MAY MAKE ORDERS IN ACCORDANCE WITH PARAGRAPH TWO OF SUBDIVISION (A) OF THIS SECTION, INCLUDING, BUT NOT LIMITED TO, DIRECTIONS FOR INVESTIGATIONS OF RELATIVES OR OTHER SUITABLE PERSONS WITH WHOM THE CHILD MAY SAFELY RESIDE.

S 1095. FACT FINDING AND DISPOSITION. (A) NO FACT FINDING HEARING MAY COMMENCE UNDER THIS ARTICLE UNLESS THE COURT ENTERS A FINDING:

(1) THAT THE PARENT OR PARENTS OR OTHER PERSON OR PERSONS LEGALLY RESPONSIBLE FOR THE CHILD'S CARE IS OR ARE PRESENT AT THE HEARING AND HAS OR HAVE BEEN SERVED WITH A COPY OF THE PETITION; OR

(2) IF THE PARENT OR PARENTS OR OTHER PERSON OR PERSONS LEGALLY RESPONSIBLE FOR THE CARE OF THE CHILD IS OR ARE LIVING BUT ARE NOT PRESENT, THAT EVERY REASONABLE EFFORT HAS BEEN MADE TO EFFECT SERVICE UNDER SUBDIVISION (D) OF SECTION ONE THOUSAND NINETY-THREE OF THIS ARTICLE.

(B) THE COURT SHALL SUSTAIN THE PETITION AND MAKE A FINDING THAT A CHILD IS DESTITUTE IF, BASED UPON A PREPONDERANCE OF COMPETENT, MATERIAL AND RELEVANT EVIDENCE PRESENTED, THE COURT FINDS THAT THE CHILD MEETS THE DEFINITION OF A DESTITUTE CHILD AS DESCRIBED IN SUBDIVISION (A) OF SECTION ONE THOUSAND NINETY-TWO OF THIS ARTICLE.

(C) IF THE COURT FINDS THAT THE CHILD DOES NOT MEET SUCH DEFINITION OF A DESTITUTE CHILD OR THAT THE AID OF THE COURT IS NOT REQUIRED, THE COURT SHALL DISMISS THE PETITION; PROVIDED, HOWEVER, THAT IF THE COURT FINDS THAT THE CHILD MAY BE IN NEED OF PROTECTION UNDER ARTICLE TEN OF THIS ACT, THE COURT MAY REQUEST THE COMMISSIONER OF SOCIAL SERVICES TO CONDUCT A CHILD PROTECTIVE INVESTIGATION IN ACCORDANCE WITH SUBDIVISION ONE OF SECTION ONE THOUSAND THIRTY-FOUR OF THIS ACT. THE COURT SHALL STATE THE GROUNDS FOR ANY FINDING UNDER THIS SUBDIVISION.

(D) IF THE COURT SUSTAINS THE PETITION PURSUANT TO SUBDIVISION (B) OF THIS SECTION, IT MAY IMMEDIATELY CONVENE A DISPOSITIONAL HEARING OR MAY ADJOURN THE PROCEEDING FOR FURTHER INQUIRIES TO BE MADE PRIOR TO DISPOSITION. BASED UPON MATERIAL AND RELEVANT EVIDENCE PRESENTED AT THE DISPOSITIONAL HEARING, THE COURT SHALL ENTER AN ORDER OF DISPOSITION STATING THE GROUNDS FOR ITS ORDER AND DIRECTING ONE OF THE FOLLOWING ALTERNATIVES:

(1) RELEASING THE CHILD TO HIS OR HER PARENT OR PARENTS OR OTHER PERSON OR PERSONS LEGALLY RESPONSIBLE;

(2) PLACING THE CHILD IN THE CARE AND CUSTODY OF THE COMMISSIONER OF SOCIAL SERVICES;

(3) PLACING THE CHILD IN THE CARE AND CUSTODY OF RELATIVES OR SUITABLE PERSONS; OR

(4) GRANTING AN ORDER OF CUSTODY OR GUARDIANSHIP TO RELATIVES OR SUITABLE PERSONS PURSUANT TO A PETITION UNDER ARTICLE SIX OF THIS ACT AND IN ACCORDANCE WITH THE FINDINGS REQUIRED BY SECTION ONE THOUSAND FIFTY-FIVE-B OF THIS ACT.

(E) IF THE CHILD HAS BEEN PLACED PURSUANT TO PARAGRAPHS TWO OR THREE OF SUBDIVISION (D) OF THIS SECTION, THE COURT SHALL INCLUDE THE FOLLOWING IN ITS ORDER:

(1) A DATE CERTAIN FOR THE PERMANENCY HEARING IN ACCORDANCE WITH PARAGRAPH TWO OF SUBDIVISION (A) OF SECTION ONE THOUSAND EIGHTY-NINE OF THIS ARTICLE;

(2) UNLESS THE CHILD'S PARENT OR PARENTS ARE DECEASED, A DESCRIPTION OF THE PLAN FOR THE CHILD TO VISIT WITH HIS OR HER PARENT OR PARENTS UNLESS CONTRARY TO THE CHILD'S BEST INTERESTS;

(3) A DIRECTION THAT THE CHILD BE PLACED TOGETHER WITH OR, AT MINIMUM, TO VISIT AND HAVE REGULAR COMMUNICATION WITH, HIS OR HER SIBLINGS, IF ANY, UNLESS CONTRARY TO THE BEST INTERESTS OF THE CHILD AND/OR THE SIBLINGS;

(4) UNLESS THE CHILD'S PARENT OR PARENTS ARE DECEASED, A DIRECTION THAT THE CHILD'S PARENT OR PARENTS BE NOTIFIED OF ANY PLANNING CONFERENCES TO BE HELD PURSUANT TO SUBDIVISION THREE OF SECTION FOUR HUNDRED NINE-E OF THE SOCIAL SERVICES LAW, OF THEIR RIGHT TO ATTEND SUCH CONFERENCES AND TO HAVE COUNSEL OR ANOTHER REPRESENTATIVE OR COMPANION WITH THEM;

(5) IF THE CHILD IS OR WILL BE FOURTEEN OR OLDER BY THE DATE OF THE PERMANENCY HEARING, THE SERVICES AND ASSISTANCE THAT MAY BE NECESSARY TO ASSIST THE CHILD IN LEARNING INDEPENDENT LIVING SKILLS; AND

(6) UNLESS THE CHILD'S PARENT OR PARENTS ARE DECEASED, A NOTICE THAT, IF THE CHILD REMAINS IN FOSTER CARE FOR FIFTEEN OF THE MOST RECENT TWENTY-TWO MONTHS, THE AGENCY MAY BE REQUIRED BY LAW TO FILE A PETITION TO TERMINATE PARENTAL RIGHTS.

(F) IF THE CHILD HAS BEEN PLACED PURSUANT TO PARAGRAPH TWO OR THREE OF SUBDIVISION (D) OF THIS SECTION, THE PROVISIONS OF PART EIGHT OF ARTICLE TEN OF THIS ACT SHALL BE APPLICABLE.

(G) IF THE COURT MAKES AN ORDER PURSUANT TO PARAGRAPH ONE, TWO OR THREE OF SUBDIVISION (D) OF THIS SECTION, THE COURT MAY INCLUDE A DIRECTION FOR THE COMMISSIONER OF SOCIAL SERVICES TO PROVIDE OR ARRANGE FOR SERVICES OR ASSISTANCE, AUTHORIZED TO BE MADE AVAILABLE UNDER THE COMPREHENSIVE ANNUAL SERVICES PROGRAM PLAN THEN IN EFFECT, TO AMELIORATE THE CONDITIONS THAT FORMED THE BASIS FOR THE FACT-FINDING UNDER THIS SECTION AND, IF THE CHILD HAS BEEN REMOVED FROM HOME, TO FACILITATE RETURN OF THE CHILD.

S 11. Subdivision 1 of section 398 of the social services law is amended to read as follows:

1. As to destitute children: Assume charge of and provide CARE AND support for any destitute child who cannot be properly cared for in his OR HER home, AND IF IT IS NECESSARY FOR THE COMMISSIONER TO TAKE CUSTODY OF THE CHILD, FILE A PETITION PURSUANT TO SECTION ONE THOUSAND NINETY-THREE OF THE FAMILY COURT ACT.

S 12. This act shall take effect immediately; provided, however, that local commissioners of social services shall file petitions under this



1 act within ninety days of such effective date for any destitute child in  
2 their care and custody on such effective date; and provided further that  
3 the amendments to subdivision (a) of section 249 of the family court act  
4 made by section two of this act shall survive the expiration and rever-  
5 sion of such subdivision as provided in section 8 of chapter 29 of the  
6 laws of 2011, as amended.