

5203

2013-2014 Regular Sessions

I N S E N A T E

May 14, 2013

Introduced by Sen. FELDER -- (at request of the Office of Court Administration) -- 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 non-respondent parents in child protective, destitute child and permanency proceedings in family court

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 three new subdivisions (l), (m) and (n) to read as follows:
3 (L) "PARENT" MEANS A PERSON WHO IS RECOGNIZED UNDER THE LAWS OF THE
4 STATE OF NEW YORK TO BE THE CHILD'S LEGAL PARENT.
5 (M) "RELATIVE" MEANS ANY PERSON WHO IS RELATED TO THE CHILD BY BLOOD,
6 MARRIAGE OR ADOPTION AND WHO IS NOT A PARENT, PUTATIVE PARENT OR RELATIVE
7 OF A PUTATIVE PARENT OF THE CHILD.
8 (N) "SUITABLE PERSON" MEANS ANY PERSON WHO PLAYS OR HAS PLAYED A
9 SIGNIFICANT POSITIVE ROLE IN THE CHILD'S LIFE OR IN THE LIFE OF THE
10 CHILD'S FAMILY.
11 S 2. Subdivision 1, paragraph (a) of subdivision 2 and subdivision 3
12 of section 1017 of the family court act, subdivision 1 and paragraph (a)
13 of subdivision 2 as amended by section 10 of part A of chapter 3 of the
14 laws of 2005, the opening paragraph of subdivision 1 as separately
15 amended by chapter 671 of the laws of 2005, subparagraphs (i) and (ii)
16 of paragraph a of subdivision 2 as amended and subdivision 3 as added by
17 chapter 519 of the laws of 2008, are amended to read as follows:
18 1. In any proceeding under this article, when the court determines
19 that a child must be removed from his or her home, pursuant to part two
20 of this article, or placed, pursuant to section one thousand fifty-five
21 of this article[,]:
22 (A) the court shall direct the local commissioner of social services
23 to conduct an immediate investigation to locate any non-respondent

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

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1 parent of the child and any relatives of the child, including all of the
2 child's grandparents, all [suitable] relatives OR SUITABLE PERSONS iden-
3 tified by any respondent parent or any non-respondent parent and any
4 relative OR SUITABLE PERSON identified by a child over the age of five
5 as a [relative] PERSON who plays or has played a significant positive
6 role in his or her life[, and]. THE LOCAL COMMISSIONER SHALL inform
7 them of the pendency of the proceeding and of the opportunity for
8 [becoming foster parents or for seeking custody or care] NON-RESPONDENT
9 PARENTS TO SEEK TEMPORARY RELEASE of the child[, and that the child may
10 be adopted by foster parents if attempts at reunification with the birth
11 parent are not required or are unsuccessful] UNDER THIS ARTICLE OR
12 CUSTODY UNDER ARTICLE SIX OF THIS ACT OR FOR RELATIVES OR SUITABLE
13 PERSONS TO SEEK TO BECOME FOSTER PARENTS OR TO PROVIDE FREE CARE UNDER
14 THIS ARTICLE OR CUSTODY UNDER ARTICLE SIX OF THIS ACT. RULES OF COURT
15 SHALL SPECIFY THE CONTENTS OF THE NOTICE. The local commissioner of
16 social services shall record the results of such investigation, includ-
17 ing, but not limited to, the name, last known address, social security
18 number, employer's address and any other identifying information to the
19 extent known regarding any non-respondent parent, in the uniform case
20 record maintained pursuant to section four hundred nine-f of the social
21 services law. [For the purpose of this section, "non-respondent parent"
22 shall include a person entitled to notice of the pendency of the
23 proceeding and of the right to intervene as an interested party pursuant
24 to subdivision (d) of section one thousand thirty-five of this article,
25 and a non-custodial parent entitled to notice and the right to enforce
26 visitation rights pursuant to subdivision (e) of section one thousand
27 thirty-five of this article.]

28 (B) THE COURT SHALL ALSO DIRECT THE LOCAL COMMISSIONER OF SOCIAL
29 SERVICES TO CONDUCT AN INVESTIGATION TO LOCATE ANY PERSON WHO IS NOT
30 RECOGNIZED TO BE THE CHILD'S LEGAL PARENT AND DOES NOT HAVE THE RIGHTS
31 OF A LEGAL PARENT UNDER THE LAWS OF THE STATE OF NEW YORK BUT WHO (I)
32 HAS FILED WITH A PUTATIVE FATHER REGISTRY, OR (II) HAS A PENDING PATER-
33 NITY PETITION, OR (III) WAS MARRIED TO THE CHILD'S PARENT WITHIN SIX
34 MONTHS AFTER THE CHILD'S BIRTH, OR (IV) HAS BEEN IDENTIFIED BY THE
35 CHILD'S PARENT IN A WRITTEN SWORN STATEMENT. THE LOCAL COMMISSIONER OF
36 SOCIAL SERVICES SHALL RECORD THE RESULTS OF SUCH INVESTIGATION, INCLUD-
37 ING, BUT NOT LIMITED TO, THE NAME, LAST KNOWN ADDRESS, SOCIAL SECURITY
38 NUMBER, EMPLOYER'S ADDRESS AND ANY OTHER IDENTIFYING INFORMATION TO THE
39 EXTENT KNOWN REGARDING ANY PERSON IDENTIFIED IN THE INVESTIGATION, IN
40 THE UNIFORM CASE RECORD MAINTAINED PURSUANT TO SECTION FOUR HUNDRED
41 NINE-F OF THE SOCIAL SERVICES LAW.

42 (C) The court shall determine:

43 [(a)] (I) whether there is a [suitable] non-respondent parent [or
44 other person related to the child], RELATIVE OR SUITABLE PERSON with
45 whom such child may appropriately reside; and

46 [(b)] (II) in the case of a relative OR SUITABLE PERSON, whether such
47 [relative] INDIVIDUAL seeks approval as a foster parent pursuant to the
48 social services law for the purposes of providing care for such child,
49 or wishes to provide free care [and custody] for the child during the
50 pendency of any orders pursuant to this article.

51 (a) where the court determines that the child may APPROPRIATELY reside
52 with a [suitable] non-respondent parent or other relative or [other]
53 suitable person, either:

54 (i) grant [an] A TEMPORARY order of custody or guardianship to such
55 non-respondent parent, [other] relative or [other] suitable person
56 pursuant to A PETITION FILED UNDER ARTICLE SIX OF THIS ACT PENDING

1 FURTHER ORDER OF THE COURT, OR AT DISPOSITION OF THE PROCEEDING, GRANT A
2 FINAL ORDER OF CUSTODY OR GUARDIANSHIP TO SUCH NON-RESPONDENT PARENT,
3 RELATIVE OR SUITABLE PERSON PURSUANT TO ARTICLE SIX OF THIS ACT AND
4 section one thousand fifty-five-b of this article; or
5 (ii) [place] TEMPORARILY RELEASE the child directly [in] TO the custo-
6 dy of such non-respondent parent[, other] OR TEMPORARILY PLACE THE CHILD
7 IN THE CUSTODY OF A relative or [other] suitable person pursuant to this
8 article during the pendency of the proceeding or until further order of
9 the court, whichever is earlier and conduct such other and further
10 investigations as the court deems necessary. THE COURT MAY DIRECT THE
11 COMMISSIONER OF SOCIAL SERVICES, PURSUANT TO REGULATIONS OF THE OFFICE
12 OF CHILDREN AND FAMILY SERVICES, TO COMMENCE AN INVESTIGATION OF THE
13 HOME OF SUCH NON-RESPONDENT PARENT, RELATIVE OR SUITABLE PERSON WITHIN
14 TWENTY-FOUR HOURS AND, IN THE CASE OF A RELATIVE OR SUITABLE PERSON,
15 THEREAFTER APPROVE SUCH RELATIVE OR SUITABLE PERSON, IF QUALIFIED, AS A
16 FOSTER PARENT. IF SUCH PERSON IS QUALIFIED AS A FOSTER PARENT, THE COURT
17 MAY MAKE AN ORDER PURSUANT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH. IF
18 SUCH PERSON IS FOUND TO BE UNQUALIFIED AS A FOSTER PARENT OR IF A
19 NON-RESPONDENT PARENT IS FOUND UNQUALIFIED AS A RESOURCE FOR THE TEMPO-
20 RARY RELEASE OF THE CHILD UNDER THIS ARTICLE, THE LOCAL COMMISSIONER
21 SHALL REPORT SUCH FACT TO THE COURT FORTHWITH; or
22 (iii) remand or place the child, as applicable, with the local commis-
23 sioner of social services and direct such commissioner to have the child
24 reside with such relative or [other] suitable person [and further direct
25 such commissioner pursuant to regulations of the office of children and
26 family services, to commence an investigation of the home of such rela-
27 tive or other suitable person within twenty-four hours and thereafter
28 approve such relative or other suitable person, if qualified,] as a
29 foster parent. [If such home is found to be unqualified for approval,
30 the local commissioner shall report such fact to the court forthwith.]
31 3. An order [placing] TEMPORARILY RELEASING a child [with] TO THE
32 CUSTODY OF A NON-RESPONDENT PARENT OR PARENTS, OR TEMPORARILY PLACING A
33 CHILD IN THE CUSTODY OF a relative or RELATIVES OR other suitable person
34 OR PERSONS pursuant to SUBPARAGRAPH (II) OF PARAGRAPH (A) OF SUBDIVISION
35 TWO OF this section OR REMANDING OR PLACING A CHILD WITH A LOCAL COMMIS-
36 SIONER OF SOCIAL SERVICES TO RESIDE WITH A RELATIVE OR RELATIVES OR
37 SUITABLE PERSON OR PERSONS AS FOSTER PARENTS PURSUANT TO SUBPARAGRAPH
38 (III) OF PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION may not be
39 granted unless the [relative or other suitable] person [consents] OR
40 PERSONS TO WHOM THE CHILD IS RELEASED, REMANDED OR PLACED SUBMITS to the
41 jurisdiction of the court WITH RESPECT TO THE CHILD. The [court] ORDER
42 SHALL SET FORTH THE TERMS AND CONDITIONS APPLICABLE TO SUCH PERSON OR
43 PERSONS AND CHILD PROTECTIVE AGENCY, SOCIAL SERVICES OFFICIAL AND DULY
44 AUTHORIZED AGENCY WITH RESPECT TO THE CHILD AND may [place the person
45 with whom the child has been directly placed under supervision during
46 the pendency of the proceeding. Such supervision shall be provided by a]
47 INCLUDE, BUT IS NOT LIMITED TO, A DIRECTION FOR SUCH PERSON OR PERSONS
48 TO COOPERATE IN MAKING THE CHILD AVAILABLE FOR COURT-ORDERED VISITATION
49 WITH RESPONDENTS, SIBLINGS AND OTHERS AND FOR APPOINTMENTS WITH THE
50 CHILD'S ATTORNEY, child protective agency, social services official
51 [or], duly authorized agency, CLINICIAN OR OTHER INDIVIDUAL OR PROGRAM
52 PROVIDING SERVICES TO THE CHILD DURING THE PENDENCY OF THE PROCEEDING.
53 The court also may issue a temporary order of protection under subdivi-
54 sion (f) of section one thousand twenty-two, section one thousand twen-
55 ty-three or section one thousand twenty-nine of this article. [An order
56 of supervision issued pursuant to this subdivision shall set forth the

1 terms and conditions that the relative or suitable person must meet and
2 the actions that the child protective agency, social services official
3 or duly authorized agency must take to exercise such supervision.]

4 S 3. Section 1022-a of the family court act, as added by chapter 336
5 of the laws of 1990, is amended to read as follows:

6 S 1022-a. Preliminary orders; notice and appointment of counsel. At a
7 hearing held pursuant to section [ten hundred] ONE THOUSAND twenty-two
8 of this act at which the respondent is present, the court shall advise
9 the respondent AND ANY NON-RESPONDENT PARENT WHO IS PRESENT of the alle-
10 gations in the application and shall appoint counsel for [the respondent
11 pursuant to] EACH IN ACCORDANCE WITH section two hundred sixty-two of
12 this act [where the respondent is indigent], UNLESS WAIVED.

13 S 4. Subdivision (d) of section 1027 of the family court act, as added
14 by chapter 962 of the laws of 1970, is amended to read as follows:

15 (d) Upon such hearing, the court may, for good cause shown, release
16 the child to [the custody of] his OR HER parent or other person legally
17 responsible for his OR HER care, pending a final order of disposition,
18 in accord with SUBPARAGRAPH (II) OF PARAGRAPH (A) OF SUBDIVISION TWO OF
19 section one thousand [fifty-four] SEVENTEEN OF THIS ARTICLE.

20 S 5. The opening paragraph of subdivision (d) of section 1035 of the
21 family court act, as amended by chapter 526 of the laws of 2003, is
22 amended to read as follows:

23 Where the respondent is not the child's parent, service of the summons
24 and petition shall also be ordered on both of the child's parents; where
25 only one of the child's parents is the respondent, service of the
26 summons and petition shall also be ordered on the child's other parent.
27 The summons and petition shall be accompanied by a notice of pendency of
28 the child protective proceeding advising the parents or parent of the
29 right to appear and participate in the proceeding as an interested party
30 intervenor for the purpose of seeking temporary and permanent RELEASE OF
31 THE CHILD UNDER THIS ARTICLE OR custody of the child UNDER ARTICLE SIX
32 OF THIS ACT, and to participate thereby in all arguments and hearings
33 insofar as they affect the temporary RELEASE OR custody of the child
34 during fact-finding proceedings, and in all phases of dispositional
35 proceedings. The notice shall also ADVISE THE PARENT OR PARENTS OF THE
36 RIGHT TO COUNSEL, INCLUDING ASSIGNED COUNSEL IF INDIGENT, AND ALSO indi-
37 cate that:

38 S 6. Paragraphs (ii), (v) and (vi) of subdivision (a) of section 1052
39 of the family court act, paragraphs (ii) and (v) as amended and para-
40 graph (vi) as added by chapter 519 of the laws of 2008, are amended to
41 read as follows:

42 (ii) releasing the child to the custody of [his] A PARENT OR parents
43 or [other person legally responsible] LEGAL CUSTODIAN OR CUSTODIANS OR
44 GUARDIAN OR GUARDIANS, WHO IS NOT OR ARE NOT RESPONDENTS IN THE PROCEED-
45 ING, in accord with section one thousand fifty-four of this part; or

46 (v) RELEASING THE CHILD TO THE CUSTODY OF THE RESPONDENT OR RESPOND-
47 ENTS OR placing the respondent OR RESPONDENTS under supervision, OR
48 BOTH, in accord with section one thousand fifty-seven of this part; or

49 (vi) granting custody of the child to A NON-RESPONDENT PARENT OR
50 PARENTS, A RELATIVE OR relatives or A suitable PERSON OR persons pursu-
51 ant to section one thousand fifty-five-b AND ARTICLE SIX of this [part]
52 ACT.

53 S 7. Section 1054 of the family court act, as amended by chapter 1039
54 of the laws of 1973, subdivision (a) as amended by chapter 41 of the
55 laws of 2010 and subdivision (b) as amended by chapter 458 of the laws
56 of 1989, is amended to read as follows:

1 S 1054. Release to custody of NON-RESPONDENT parent or [other person
2 responsible for care] LEGAL CUSTODIAN OR GUARDIAN; [supervision or]
3 order of protection. (a) [If the] AN order of disposition [releases]
4 MAY RELEASE the child FOR A DESIGNATED PERIOD OF UP TO ONE YEAR to the
5 custody of [his or her] A NON-RESPONDENT parent or [other] PARENTS OR A
6 person [legally responsible for his or her care] OR PERSONS WHO HAD BEEN
7 THE CHILD'S LEGAL CUSTODIAN OR GUARDIAN at the time of the filing of the
8 petition, [the] AND WHO IS NOT OR ARE NOT RESPONDENTS IN THE PROCEEDING
9 UNDER THIS ARTICLE. AN ORDER UNDER THIS SECTION MAY BE EXTENDED UPON A
10 HEARING FOR A PERIOD OF UP TO ONE YEAR FOR GOOD CAUSE.

11 (B) THE court may [place] REQUIRE the person OR PERSONS to [whose
12 custody] WHOM the child is released under [supervision of a] THIS
13 SECTION TO SUBMIT TO THE JURISDICTION OF THE COURT WITH RESPECT TO THE
14 CHILD FOR THE PERIOD OF THE DISPOSITION OR ANY EXTENSION THEREOF. THE
15 ORDER MAY INCLUDE, BUT IS NOT LIMITED TO, A DIRECTION FOR SUCH PERSON OR
16 PERSONS TO COOPERATE IN MAKING THE CHILD AVAILABLE FOR COURT-ORDERED
17 VISITATION WITH RESPONDENTS, SIBLINGS AND OTHERS AND FOR APPOINTMENTS
18 WITH THE CHILD'S ATTORNEY, child protective agency [or of a], social
19 services official or duly authorized agency, CLINICIAN OR OTHER INDIVID-
20 UAL OR PROGRAM PROVIDING SERVICES TO THE CHILD. THE ORDER SHALL SET
21 FORTH THE TERMS AND CONDITIONS APPLICABLE TO SUCH NON-RESPONDENT AND
22 CHILD PROTECTIVE AGENCY, SOCIAL SERVICES OFFICIAL AND DULY AUTHORIZED
23 AGENCY WITH RESPECT TO THE CHILD.

24 (C) IN CONJUNCTION WITH AN ORDER RELEASING THE CHILD TO A NON-RESPON-
25 DENT PARENT, RELATIVE OR SUITABLE PERSON UNDER THIS SUBDIVISION, THE
26 COURT MAY ALSO ISSUE ANY OR ALL OF THE FOLLOWING ORDERS: AN ORDER OF
27 SUPERVISION OF A RESPONDENT PARENT UNDER SECTION ONE THOUSAND FIFTY-SEV-
28 EN, AN ORDER DIRECTING THAT SERVICES BE PROVIDED TO THE RESPONDENT
29 PARENT UNDER SECTION ONE THOUSAND FIFTEEN-A or [may enter] an order of
30 protection under section one thousand fifty-six OF THIS PART[, or both.
31 An order of supervision entered under this section shall set forth the
32 terms and conditions of such supervision that the respondent must meet
33 and the actions that the child protective agency, social services offi-
34 cial or duly authorized agency must take to exercise such supervision].

35 (D) Except as provided for herein, in any order issued pursuant to
36 this section, the court may require the child protective agency to make
37 progress reports to the court, the parties, and the child's attorney on
38 the implementation of such order. [Where the order of disposition is
39 issued upon the consent of the parties and the child's attorney, such]
40 UNLESS OTHERWISE ORDERED BY THE COURT, THE agency shall report to the
41 court, the parties and the child's attorney no later than ninety days
42 after the issuance of the order[, unless] AND NO LATER THAN SIXTY DAYS
43 PRIOR TO THE EXPIRATION OF the [court determines that the facts and
44 circumstances of the case do not require such report to be made] ORDER.

45 [(b) Rules of court shall define permissible terms and conditions of
46 supervision under this section. The duration of any period of super-
47 vision shall be for an initial period of no more than one year and the
48 court may at the expiration of that period, upon a hearing and for good
49 cause shown, make successive extensions of such supervision of up to one
50 year each.]

51 S 8. The section heading and subdivision (a) of section 1055-b of the
52 family court act, as amended by section 7 of part F of chapter 58 of the
53 laws of 2010, are amended to read as follows:

54 Custody or guardianship with A PARENT OR PARENTS, relatives or suit-
55 able persons pursuant to article six of this act or guardianship with
56 [such a person] RELATIVES OR SUITABLE PERSONS pursuant to article seven-

1 teen of the surrogate's court procedure act. (a) At the conclusion of
2 the dispositional hearing under this article, the court may enter an
3 order of disposition granting custody or guardianship of the child to a
4 PARENT OR PARENTS, AS DEFINED IN SUBDIVISION (1) OF SECTION ONE THOUSAND
5 TWELVE OF THIS ARTICLE, OR A relative OR RELATIVES or other suitable
6 person OR PERSONS under article six of this act or an order of guardian-
7 ship of the child to [such] a RELATIVE OR RELATIVES OR SUITABLE person
8 OR PERSONS under article seventeen of the surrogate's court procedure
9 act if THE FOLLOWING CONDITIONS HAVE BEEN MET:

10 (i) the PARENT OR PARENTS, relative OR RELATIVES or suitable person OR
11 PERSONS has OR HAVE filed a petition for custody or guardianship of the
12 child pursuant to article six of this act or, IN THE CASE OF A RELATIVE
13 OR RELATIVES OR SUITABLE PERSON OR PERSONS, a petition for guardianship
14 of the child under article seventeen of the surrogate's court procedure
15 act; and

16 (ii) the court [finds] HAS DETERMINED that granting custody or guardi-
17 anship of the child to [the relative or suitable] SUCH person OR PERSONS
18 is in the best interests of the child and that the safety of the child
19 will not be jeopardized if the respondent or respondents under the child
20 protective proceeding are no longer under supervision or receiving
21 services. In determining whether the best interests of the child will be
22 promoted by the granting of guardianship of the child to a relative who
23 has cared for the child as a foster parent, the court shall give due
24 consideration to the permanency goal of the child, the relationship
25 between the child and the relative, and whether the relative and the
26 social services district have entered into an agreement to provide
27 kinship guardianship assistance payments for the child to the relative
28 under title ten of article six of the social services law, and, if so,
29 whether the fact-finding hearing pursuant to section one thousand
30 fifty-one of this part and a permanency hearing pursuant to section one
31 thousand eighty-nine of this chapter [has] HAVE occurred and whether
32 compelling reasons exist for determining that the return home of the
33 child and the adoption of the child are not in the best interests of the
34 child and are, therefore, not appropriate permanency options; and

35 (iii) the court [finds] HAS DETERMINED that granting custody or guar-
36 dianship of the child to the PARENT, relative or suitable person under
37 article six of this act or granting guardianship of the child to the
38 relative or [other] suitable person under article seventeen of the
39 surrogate's court procedure act will provide the child with a safe and
40 permanent home; and

41 (iv) all parties to the child protective proceeding consent to the
42 granting of custody or guardianship under article six of this act or the
43 granting of guardianship under article seventeen of the surrogate's
44 court procedure ACT; or [(v)], IF ANY OF THE PARTIES OBJECT TO THE
45 GRANTING OF CUSTODY OR GUARDIANSHIP, THE COURT HAS MADE THE FOLLOWING
46 FINDINGS after a [consolidated] JOINT dispositional hearing on the child
47 protective petition and the petition under article six of this act or
48 under article seventeen of the surrogate's court procedure act[:]:

49 (A) if a RELATIVE OR RELATIVES OR SUITABLE PERSON OR PERSONS HAVE
50 FILED A PETITION FOR CUSTODY OR GUARDIANSHIP AND A parent or parents
51 [fail to consent] OBJECT to the granting of [custody or guardianship
52 under article six of this act or] the [granting of guardianship under
53 article seventeen of the surrogate's court procedure act] PETITION, the
54 court [finds] HAS DETERMINED that THE RELATIVE OR RELATIVES OR SUITABLE
55 PERSON OR PERSONS HAVE DEMONSTRATED THAT extraordinary circumstances
56 exist that support granting an order of custody or guardianship TO THE

1 RELATIVE OR RELATIVES OR SUITABLE PERSON OR PERSONS AND THAT THE GRANT-
2 ING OF THE ORDER WILL SERVE THE CHILD'S BEST INTERESTS; or

3 (B) if a RELATIVE OR RELATIVES OR SUITABLE PERSON OR PERSONS HAVE
4 FILED A PETITION FOR CUSTODY OR GUARDIANSHIP AND A party other than the
5 parent or parents [fail] OBJECTS to [consent to] the granting of [custo-
6 dy or guardianship under article six of this act or] the PETITION
7 [granting of guardianship under article seventeen of the surrogate's
8 court procedure act], the court [finds] HAS DETERMINED that granting
9 custody or guardianship of the child to the relative OR RELATIVES or
10 suitable person OR PERSONS is in the best interests of the child; OR

11 (C) IF A PARENT HAS FILED A PETITION FOR CUSTODY UNDER ARTICLE SIX OF
12 THIS ACT AND A PARTY WHO IS NOT A PARENT OF THE CHILD OBJECTS TO THE
13 GRANTING OF THE PETITION, THE COURT HAS DETERMINED EITHER THAT THE
14 OBJECTING PARTY HAS FAILED TO ESTABLISH EXTRAORDINARY CIRCUMSTANCES, OR,
15 IF THE OBJECTING PARTY HAS ESTABLISHED EXTRAORDINARY CIRCUMSTANCES, THAT
16 GRANTING CUSTODY TO THE PETITIONING PARENT WOULD NONETHELESS BE IN THE
17 CHILD'S BEST INTERESTS; OR

18 (D) IF A PARENT HAS FILED A PETITION FOR CUSTODY UNDER ARTICLE SIX OF
19 THIS ACT AND THE OTHER PARENT OBJECTS TO THE GRANTING OF THE PETITION,
20 THE COURT HAS DETERMINED THAT GRANTING CUSTODY TO THE PETITIONING PARENT
21 IS IN THE CHILD'S BEST INTERESTS.

22 S 9. Section 1057 of the family court act, as amended by chapter 41 of
23 the laws of 2010, is amended to read as follows:

24 S 1057. [Supervision] RELEASE OF THE CHILD TO THE RESPONDENT OR
25 RESPONDENTS; SUPERVISION OF THE RESPONDENT OR RESPONDENTS.

26 (A) The court may RELEASE THE CHILD TO THE RESPONDENT OR RESPONDENTS
27 FOR A PERIOD OF UP TO ONE YEAR, WHICH MAY BE EXTENDED PURSUANT TO SUBDI-
28 VISION (D) OF THIS SECTION.

29 (B) IN CONJUNCTION WITH AN ORDER RELEASING A CHILD UNDER THIS SECTION
30 OR AN ORDER UNDER PARAGRAPH (II), (III) OR (IV) OF SUBDIVISION (A) OF
31 SECTION ONE THOUSAND FIFTY-TWO OF THIS PART, THE COURT MAY place the
32 respondent OR RESPONDENTS under supervision of a child protective agency
33 or of a social services official or duly authorized agency. An order of
34 supervision entered under this section shall set forth the terms and
35 conditions of such supervision that the respondent OR RESPONDENTS must
36 meet and the actions that the child protective agency, social services
37 official or duly authorized agency must take to exercise such super-
38 vision.

39 (C) Except as provided for herein, in any order issued pursuant to
40 SUBDIVISION (A) OR (B) OF this section, the court may require the child
41 protective agency to make progress reports to the court, the parties,
42 and the child's attorney on the implementation of such order. [Where
43 the order of disposition is issued upon the consent of the parties and
44 the child's attorney] UNLESS OTHERWISE ORDERED BY THE COURT, such agency
45 shall report to the court, the parties and the child's attorney no later
46 than ninety days after the issuance of the order[, unless] AND NO LATER
47 THAN SIXTY DAYS PRIOR TO THE EXPIRATION OF the [court determines that
48 the facts and circumstances of the case do not require such report to be
49 made] ORDER. Rules of court shall define permissible terms and condi-
50 tions of supervision OF THE RESPONDENT OR RESPONDENTS under this
51 section.

52 (D) The duration of any period of RELEASE OF THE CHILD TO THE RESPOND-
53 ENT OR RESPONDENTS OR supervision OF THE RESPONDENT OR RESPONDENTS OR
54 BOTH shall be for an initial period of no more than one year [and the].
55 THE court may at the expiration of that period, upon a hearing and for

1 good cause shown, make successive extensions of such RELEASE OR super-
2 vision OR BOTH of up to one year each.

3 S 10. The section heading and subdivisions (a) and (c) of section
4 1089-a of the family court act, as amended by section 8 of part F of
5 chapter 58 of the laws of 2010, are amended to read as follows:

6 Custody or guardianship with A PARENT OR PARENTS, A RELATIVE OR rela-
7 tives or A suitable PERSON OR persons pursuant to article six of this
8 act or guardianship OF A RELATIVE OR RELATIVES OR A SUITABLE PERSON OR
9 PERSONS pursuant to article seventeen of the surrogate's court procedure
10 act. (a) Where the permanency plan is placement with a fit and willing
11 relative, the court may issue an order of custody or guardianship in
12 response to a petition filed by a relative or suitable person seeking
13 custody or guardianship of the child under article six of this act or an
14 order of guardianship of the child under article seventeen of the surro-
15 gate's court procedure act [at]. WHERE THE PERMANENCY PLAN IS CUSTODY
16 UNDER ARTICLE SIX OF THIS ACT WITH A PARENT OR PARENTS WHO HAD NOT BEEN
17 RESPONDENTS IN THE PROCEEDING IN WHICH THE CHILD HAD BEEN PLACED UNDER
18 ARTICLE TEN OR TEN-C OF THIS ACT OR SECTION THREE HUNDRED FIFTY-EIGHT-A
19 OF THE SOCIAL SERVICES LAW, THE COURT MAY ISSUE AN ORDER OF CUSTODY
20 UNDER ARTICLE SIX OF THIS ACT IN RESPONSE TO A PETITION FILED BY SUCH
21 PARENT OR PARENTS. A PETITION FOR CUSTODY OR GUARDIANSHIP UNDER THIS
22 SUBDIVISION MAY BE HEARD JOINTLY WITH a permanency hearing held pursuant
23 to this article [and terminate]. AN ORDER OF CUSTODY OR GUARDIANSHIP
24 ISSUED IN ACCORDANCE WITH THIS SUBDIVISION WILL RESULT IN TERMINATION OF
25 all pending orders issued pursuant to article ten OR TEN-C of this act
26 if THE FOLLOWING CONDITIONS HAVE BEEN MET:

27 (i) the court [finds] HAS DETERMINED that granting custody TO THE
28 PARENT OR PARENTS, RELATIVE OR RELATIVES OR SUITABLE PERSON OR PERSONS
29 or guardianship of the child to the relative OR RELATIVES or suitable
30 person OR PERSONS is in the best interests of the child and that the
31 termination of the order placing the child pursuant to article ten OR
32 TEN-C of this act will not jeopardize the safety of the child. In deter-
33 mining whether the best interests of the child will be promoted by the
34 granting of guardianship of the child to a relative who has cared for
35 the child as a foster parent, the court shall give due consideration to
36 the permanency goal of the child, the relationship between the child and
37 the relative, and whether the relative and the local department of
38 social services have entered into an agreement to provide kinship guar-
39 dianship assistance payments for the child to the relative under title
40 ten of article six of the social services law, and, if so, whether a
41 fact-finding hearing pursuant to section one thousand fifty-one of this
42 chapter has occurred, and whether compelling reasons exist for determin-
43 ing that the return home of the child and the adoption of the child are
44 not in the best interests of the child and are, therefore, not appropri-
45 ate permanency options; and

46 (ii) the court [finds] HAS DETERMINED that granting custody TO THE
47 PARENT OR PARENTS, RELATIVE OR RELATIVES OR SUITABLE PERSON OR PERSONS
48 or guardianship of the child to the relative or RELATIVES OR suitable
49 person OR PERSONS will provide the child with a safe and permanent home;
50 and

51 (iii) the parents, the attorney for the child, the local department of
52 social services, and the foster parent of the child who has been the
53 foster parent for the child for one year or more consent to the issuance
54 of an order of custody or guardianship under article six of this act or
55 the granting of guardianship under article seventeen of the surrogate's
56 court procedure act and the termination of the order of placement pursu-

1 ant to article ten of this act; or [(iv)], IF ANY OF THE PARTIES OBJECT
2 TO THE GRANTING OF CUSTODY OR GUARDIANSHIP, THE COURT HAS MADE THE
3 FOLLOWING FINDINGS after a [consolidated] JOINT hearing on the permanen-
4 cy of the child and the petition under article six of this act or arti-
5 cle seventeen of the surrogate's court procedure act[;]:

6 (A) if a RELATIVE OR RELATIVES OR SUITABLE PERSON OR PERSONS HAVE
7 FILED A PETITION FOR CUSTODY OR GUARDIANSHIP AND A parent or parents
8 [fail to consent] OBJECTS to the granting of [custody or guardianship
9 under article six of this act or] the [granting of guardianship under
10 article seventeen of the surrogate's court procedure act] PETITION, the
11 court [finds] HAS DETERMINED that THE RELATIVE OR RELATIVES OR SUITABLE
12 PERSON OR PERSONS HAVE DEMONSTRATED THAT extraordinary circumstances
13 exist that support granting an order of custody or guardianship under
14 article six of this act or the granting of guardianship under article
15 seventeen of the surrogate's court procedure act TO THE RELATIVE OR
16 RELATIVES OR SUITABLE PERSON OR PERSONS AND THAT THE GRANTING OF THE
17 ORDER WILL SERVE THE CHILD'S BEST INTERESTS; or

18 (B) if [the local department of social services, the attorney for the
19 child, or the foster parent of the child who has been the foster parent
20 for the child for one year or more fail to consent] A RELATIVE OR RELA-
21 TIVES OR SUITABLE PERSON OR PERSONS HAVE FILED A PETITION FOR CUSTODY OR
22 GUARDIANSHIP AND A PARTY OTHER THAN THE PARENT OR PARENTS OBJECTS to the
23 granting of [custody or guardianship under article six of this act or
24 the granting of guardianship under article seventeen of the surrogate's
25 court procedure act] THE PETITION, the court [finds] HAS DETERMINED that
26 granting custody or guardianship of the child to the relative OR RELA-
27 TIVES or suitable person OR PERSONS is in the best interests of the
28 child; OR

29 (C) IF A PARENT HAS FILED A PETITION FOR CUSTODY UNDER ARTICLE SIX OF
30 THIS ACT AND A PARTY WHO IS NOT A PARENT OF THE CHILD OBJECTS TO THE
31 GRANTING OF THE PETITION, THE COURT HAS DETERMINED EITHER THAT THE
32 OBJECTING PARTY HAS FAILED TO ESTABLISH EXTRAORDINARY CIRCUMSTANCES, OR,
33 IF THE OBJECTING PARTY HAS ESTABLISHED EXTRAORDINARY CIRCUMSTANCES, THAT
34 GRANTING CUSTODY TO THE PETITIONING PARENT WOULD NONETHELESS BE IN THE
35 CHILD'S BEST INTERESTS; OR

36 (D) IF A PARENT HAS FILED A PETITION FOR CUSTODY UNDER ARTICLE SIX OF
37 THIS ACT AND THE OTHER PARENT OBJECTS TO THE GRANTING OF THE PETITION,
38 THE COURT HAS DETERMINED THAT GRANTING CUSTODY TO THE PETITIONING PARENT
39 IS IN THE CHILD'S BEST INTERESTS; OR

40 (E) IF THE LOCAL DEPARTMENT OF SOCIAL SERVICES, THE ATTORNEY FOR THE
41 CHILD, OR THE FOSTER PARENT OF THE CHILD WHO HAS BEEN THE FOSTER PARENT
42 FOR THE CHILD FOR ONE YEAR OR MORE OBJECTS TO THE GRANTING OF CUSTODY OR
43 GUARDIANSHIP UNDER ARTICLE SIX OF THIS ACT OR THE GRANTING OF GUARDIAN-
44 SHIP UNDER ARTICLE SEVENTEEN OF THE SURROGATE'S COURT PROCEDURE ACT, THE
45 COURT HAS DETERMINED THAT GRANTING CUSTODY OR GUARDIANSHIP OF THE CHILD
46 TO THE PARENT, RELATIVE OR SUITABLE PERSON IS IN THE BEST INTERESTS OF
47 THE CHILD.

48 (c) As part of the order granting custody or guardianship [to the
49 relative or suitable person] IN ACCORDANCE WITH THIS SECTION pursuant to
50 article six of this act or the granting of guardianship under article
51 seventeen of the surrogate's court procedure act, the court may require
52 that the local department of social services and the attorney for the
53 child receive notice of, and be made parties to, any subsequent proceed-
54 ing to modify the order of custody or guardianship granted pursuant to
55 the article six proceeding; provided, however, if the guardian and the
56 local department of social services have entered into an agreement to

1 provide kinship guardianship assistance payments for the child to the
2 relative under title ten of article six of the social services law, the
3 order must require that the local department of social services and the
4 attorney for the child receive notice of, and be made parties to, any
5 such subsequent proceeding involving custody or guardianship of the
6 child.

7 S 11. Paragraph 2 of subdivision (d) of section 1095 of the family
8 court act, as amended by chapter 3 of the laws of 2012, is amended to
9 read as follows:

10 (2) granting an order of custody [or guardianship] to PARENTS, rela-
11 tives or suitable persons OR GUARDIANSHIP TO RELATIVES OR SUITABLE
12 PERSONS pursuant to a petition under article six of this act or guardi-
13 anship of the child to a relative or suitable person under article
14 seventeen of the surrogate's court procedure act and in accordance with
15 section one thousand ninety-six of this article.

16 S 12. The section heading and subdivision (a) of section 1096 of the
17 family court act, as added by chapter 3 of the laws of 2012, are amended
18 to read as follows:

19 Custody or guardianship with PARENTS, relatives or suitable persons
20 pursuant to article six of this act or article seventeen of the surro-
21 gate's court procedure act. (a) At the conclusion of a hearing held
22 pursuant to section one thousand ninety-five of this article, the court
23 may enter an order of disposition granting custody [or guardianship] of
24 the child to a PARENT, relative or suitable person under article six of
25 this act or guardianship of the child to a relative or suitable person
26 under article SIX OF THIS ACT OR ARTICLE seventeen of the surrogate's
27 court procedure act if THE FOLLOWING CONDITIONS HAVE BEEN MET:

28 (1) the PARENT, relative or suitable person has filed a petition for
29 custody [or guardianship] of the child pursuant to article six of this
30 act or guardianship of the child pursuant to article SIX OF THIS ACT OR
31 ARTICLE seventeen of the surrogate's court procedure act; and

32 (2) the court finds that granting custody [or guardianship] of the
33 child to the PARENT, relative or suitable person OR GUARDIANSHIP OF THE
34 CHILD TO THE RELATIVE OR SUITABLE PERSON is in the best interests of the
35 child; and

36 (3) the court finds that granting custody [or guardianship] of the
37 child to the PARENT, relative or suitable person under article six of
38 this act or guardianship of the child to a relative or suitable person
39 under article SIX OF THIS ACT OR ARTICLE seventeen of the surrogate's
40 court procedure act will provide the child with a safe and permanent
41 home; and

42 (4) all parties to the destitute child proceeding consent to the
43 granting of custody or guardianship under article six of this act or
44 article seventeen of the surrogate's court procedure act; or [(5)] after
45 a consolidated fact finding and dispositional hearing on the destitute
46 child petition [and] HEARD JOINTLY WITH the petition under article six
47 of this act or article seventeen of the surrogate's court procedure act:

48 (i) if a RELATIVE OR RELATIVES OR SUITABLE PERSON OR PERSONS HAVE
49 FILED A PETITION FOR CUSTODY OR GUARDIANSHIP AND A parent or parents
50 [fail to consent] OBJECTS to the granting of custody or guardianship
51 under article six of this act or guardianship under article seventeen of
52 the surrogate's court procedure act, the court [finds] HAS DETERMINED
53 that THE RELATIVE OR RELATIVES OR SUITABLE PERSON OR PERSONS HAVE DEMON-
54 STRATED THAT extraordinary circumstances exist that support granting an
55 order of custody or guardianship under article six of this act or guar-
56 dianship under article seventeen of the surrogate's court procedure act

1 TO THE RELATIVE OR RELATIVES OR SUITABLE PERSON OR PERSONS AND THAT THE
2 GRANTING OF THE ORDER WILL SERVE THE CHILD'S BEST INTERESTS; or
3 (ii) if [the] A RELATIVE OR RELATIVES OR SUITABLE PERSON OR PERSONS
4 HAVE FILED A PETITION FOR CUSTODY OR GUARDIANSHIP AND A PARTY OTHER THAN
5 A parent or parents [consent and a party other than a parent fails to
6 consent] OBJECTS to the granting of [custody or guardianship under arti-
7 cle six of this act or guardianship under article seventeen of the
8 surrogate's court procedure act] THE PETITION, the court [finds] HAS
9 DETERMINED that granting custody or guardianship of the child to the
10 relative or suitable person is in the best interests of the child; OR
11 (III) IF A PARENT HAS FILED A PETITION FOR CUSTODY UNDER ARTICLE SIX
12 OF THIS ACT AND A PARTY WHO IS NOT A PARENT OF THE CHILD OBJECTS TO THE
13 GRANTING OF THE PETITION, THE COURT HAS DETERMINED EITHER THAT THE
14 OBJECTING PARTY HAS FAILED TO ESTABLISH EXTRAORDINARY CIRCUMSTANCES, OR,
15 IF THE OBJECTING PARTY HAS ESTABLISHED EXTRAORDINARY CIRCUMSTANCES, THAT
16 GRANTING CUSTODY TO THE PETITIONING PARENT WOULD NONETHELESS BE IN THE
17 CHILD'S BEST INTERESTS; OR
18 (IV) IF A PARENT HAS FILED A PETITION FOR CUSTODY UNDER ARTICLE SIX OF
19 THIS ACT AND THE OTHER PARENT OBJECTS TO THE GRANTING OF THE PETITION,
20 THE COURT HAS DETERMINED THAT GRANTING CUSTODY TO THE PETITIONING PARENT
21 IS IN THE CHILD'S BEST INTERESTS.
22 S 13. This act shall take effect on the ninetieth day after it shall
23 have become a law.