

7339--A

I N S E N A T E

May 13, 2014

Introduced by Sen. FELDER -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the social services law, in relation to the out-of-home placement of certain children with disabilities or disorders

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

1 Section 1. Subdivision 3 of section 358-a of the social services law
2 is amended by adding a new paragraph (g) to read as follows:
3 (G) THE COURT MAY APPROVE A PETITION BY OR AGREEMENT WITH A SOCIAL
4 SERVICES OFFICIAL FOR THE TRANSFER FOR TEMPORARY PLACEMENT AND CARE
5 BASED ON CHILD SERVICE NEEDS FOR THE PROVISION OF NECESSARY SERVICES FOR
6 THE CHILD'S EMOTIONAL, BEHAVIORAL OR MENTAL DISORDER, OR MENTAL OR PHYS-
7 ICAL DISABILITY, WITHOUT THE TRANSFER OF CUSTODY, WHICH PROVIDES THAT
8 THE SOCIAL SERVICES OFFICIAL SHALL MAINTAIN RESPONSIBILITY FOR THE
9 TEMPORARY PLACEMENT AND CARE OF THE CHILD. THE SOCIAL SERVICES DISTRICT
10 SHALL BE ASSIGNED OVERALL RESPONSIBILITY FOR TEMPORARY PLACEMENT AND
11 CARE OF THE CHILD, INCLUDING, BUT NOT LIMITED TO, EITHER THE ACTUAL OR
12 ACTIVE SUPERVISION OF THE DEVELOPMENT OF AN INDIVIDUAL CASE PLAN FOR THE
13 CHILD, PERIODIC REVIEW OF THE CASE PLAN AND REVIEW OF THE APPROPRIATE-
14 NESS AND SUITABILITY OF THE PLAN AND PLACEMENT, AND ENSURING THAT PROPER
15 CARE AND SERVICES ARE PROVIDED TO FACILITATE RETURN TO THE CHILD'S HOME
16 OR OTHER ALTERNATIVE PERMANENT PLACEMENT, ALL IN ADHERENCE WITH STATE
17 AND FEDERAL RULES, REGULATIONS AND POLICY INTERPRETATIONS.
18 S 2. Subdivision 2 of section 384-a of the social services law is
19 amended by adding a new paragraph (i) to read as follows:
20 (I) A SOCIAL SERVICES OFFICIAL MAY ACCEPT A TRANSFER FOR TEMPORARY
21 PLACEMENT AND CARE OF A CHILD FOR THE PROVISION OF NECESSARY SERVICES
22 FOR THE CHILD'S EMOTIONAL, BEHAVIORAL OR MENTAL DISORDER, OR MENTAL OR
23 PHYSICAL DISABILITY, WITHOUT THE TRANSFER OF CUSTODY, PROVIDED THAT THE
24 SOCIAL SERVICES OFFICIAL SHALL MAINTAIN RESPONSIBILITY FOR THE TEMPORARY
25 PLACEMENT AND CARE OF THE CHILD. THE SOCIAL SERVICES OFFICIAL SHALL BE
26 ASSIGNED OVERALL RESPONSIBILITY FOR THE TEMPORARY PLACEMENT AND CARE OF

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

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1 THE CHILD, INCLUDING BUT NOT LIMITED TO, EITHER ACTUAL OR ACTIVE SUPER-
2 VISION OF THE DEVELOPMENT OF AN INDIVIDUAL CASE PLAN FOR THE CHILD,
3 PERIODIC REVIEW OF THE CASE PLAN AND REVIEW OF THE APPROPRIATENESS AND
4 SUITABILITY OF THE PLAN AND PLACEMENT, AND ENSURING THAT PROPER CARE AND
5 SERVICES ARE PROVIDED TO FACILITATE RETURN TO THE CHILD'S HOME OR OTHER
6 ALTERNATIVE PERMANENT PLACEMENT, ALL IN ADHERENCE WITH STATE AND FEDERAL
7 RULES, REGULATIONS AND POLICY INTERPRETATIONS.

8 S 3. Section 358-a of the social services law, as amended by chapter
9 78 of the laws of 1978, subdivision 1 and paragraph (e) of subdivision 3
10 as amended, and paragraphs (b), (c) and (d) of subdivision 3 as added by
11 chapter 7 of the laws of 1999, paragraph (b) of subdivision 1 as amended
12 by section 16 of part C of chapter 83 of the laws of 2002, subdivisions
13 2 and 3 as amended by chapter 808 of the laws of 1985, paragraph (a) of
14 subdivision 2 as amended by chapter 671 of the laws of 2005, paragraph
15 (b) of subdivision 2 as amended by chapter 87 of the laws of 1993,
16 subdivision 2-a as amended by section 35, paragraph (a) and the closing
17 paragraph of paragraph (b) of subdivision 3 as amended by section 36,
18 paragraph (f) of subdivision 3 as amended by section 37, and subdivi-
19 sions 7 and 8 as amended by section 39 of part A of chapter 3 of the
20 laws of 2005, paragraph (b) of subdivision 2-a and subdivision 12 as
21 amended by chapter 437 of the laws of 2006, subdivision 4 as amended by
22 chapter 823 of the laws of 1987, subdivisions 5 and 9 as amended by
23 chapter 465 of the laws of 1992, subdivision 6 and paragraphs (b) and
24 (c) of subdivision 10 as amended by chapter 41 of the laws of 2010,
25 subdivision 10 as amended by chapter 457 of the laws of 1988, and subdivi-
26 sion 11 as added by chapter 854 of the laws of 1990, is amended to
27 read as follows:

28 S 358-a. Dependent children in foster care. (1) Initiation of judicial
29 proceeding. (a) A social services official who accepts or proposes to
30 accept the custody and guardianship of a child by means of an instrument
31 executed pursuant to the provisions of section three hundred eighty-four
32 of this chapter, or the TRANSFER FOR TEMPORARY PLACEMENT AND CARE OR
33 care and custody of a child as a public charge by means of an instrument
34 executed pursuant to the provisions of section three hundred eighty-
35 four-a of this chapter, shall determine whether such child is likely to
36 remain in the care of such official for a period in excess of thirty
37 consecutive days. If such official determines that the child is likely
38 to remain in care for a period in excess of thirty consecutive days,
39 such official shall petition the family court judge of the county or
40 city in which the social services official has his or her office, to
41 approve such instrument upon a determination that the placement of the
42 child is in the best interest of the child, that it would be contrary to
43 the welfare of the child to continue in his or her own home and, that
44 where appropriate, reasonable efforts were made prior to the placement
45 of the child into foster care to prevent or eliminate the need for
46 removal of the child from his or her home and that prior to the initi-
47 ation of the court proceeding required to be held by this subdivision,
48 reasonable efforts were made to make it possible for the child to return
49 safely home. In the case of a child [whose] WHO HAS EITHER BEEN TRANS-
50 FERRED FOR TEMPORARY PLACEMENT AND CARE OR FOR care and custody [have]
51 AND HAS been transferred to a social services official by means of an
52 instrument executed pursuant to the provisions of section three hundred
53 eighty-four-a of this chapter, approval of the instrument shall only be
54 made upon an additional determination that all of the requirements of
55 such section have been satisfied.

1 (b) The social services official shall initiate the proceeding by
2 filing the petition as soon as practicable, but in no event later than
3 thirty days following removal of the child from the home provided,
4 however, that the court shall receive, hear and determine petitions
5 filed later than thirty days following removal of the child from his or
6 her home, but state reimbursement shall not be available to the social
7 services district for care and maintenance provided to such child. The
8 social services official shall diligently pursue such proceeding. Where
9 the care and custody OR TEMPORARY PLACEMENT AND CARE of a child as a
10 public charge has been transferred to a social services official by
11 means of an instrument executed pursuant to the provisions of section
12 three hundred eighty-four-a of this chapter for a period of thirty days
13 or less for an indeterminate period which such official deems unlikely
14 to exceed thirty days, and thereafter such official determines that such
15 child will remain in his or her care and custody for a period in excess
16 of thirty days, such official shall, as soon as practicable but in no
17 event later than thirty days following such determination, execute with
18 the child's parent, parents or guardian a new instrument pursuant to the
19 provision of section three hundred eighty-four or three hundred eighty-
20 four-a of this chapter and shall file a petition in family court, pursu-
21 ant to this section, for approval of such instrument. In such cases
22 involving a social services official, expenditures for the care and
23 maintenance of such child from the date of the initial transfer [of his]
24 FOR EITHER TEMPORARY PLACEMENT AND CARE OR care and custody to the
25 social services official shall be subject to state reimbursement.

26 (2) Contents of petition. (a) Any petition required or authorized
27 pursuant to subdivision one of this section shall allege whether the
28 parent, parents or guardian executed the instrument because the parent,
29 parents or guardian would be unable to make adequate provision for the
30 care, maintenance and supervision of such child in his or their own
31 home, and shall include facts supporting the petition. [The] IF THE
32 CARE AND CUSTODY OF THE CHILD HAS BEEN TRANSFERRED THE petition shall
33 contain a notice in conspicuous print providing that if the child
34 remains in foster care for fifteen of the most recent twenty-two months,
35 the agency may be required by law to file a petition to terminate
36 parental rights. IF THE TEMPORARY PLACEMENT AND CARE OF THE CHILD HAS
37 BEEN TRANSFERRED, THE PETITION SHALL CONTAIN A NOTICE IN CONSPICUOUS
38 PRINT PROVIDING THAT IF THE PARENT FAILS TO COMPLY WITH THE REQUIREMENTS
39 SET FORTH IN SUBPARAGRAPH (V) OF PARAGRAPH (C) OF SUBDIVISION TWO OF
40 SECTION THREE HUNDRED EIGHTY-FOUR-A OF THIS ARTICLE, THE AGENCY SHALL BE
41 REQUIRED TO FILE A PETITION FOR THE TRANSFER OF CARE AND CUSTODY OF THE
42 CHILD TO AN AUTHORIZED AGENCY. The petition shall also set forth the
43 names and last known addresses of all persons required to be given
44 notice of the proceeding, pursuant to this section and section three
45 hundred eighty-four-c of this chapter, and there shall be shown by the
46 petition or by affidavit or other proof satisfactory to the court that
47 there are no persons other than those set forth in the petition who are
48 entitled to notice pursuant to the provisions of this section or of
49 section three hundred eighty-four-c of this chapter. The petition shall
50 also set forth the efforts which were made, prior to the placement of
51 the child into foster care, to prevent or eliminate the need for removal
52 of the child from his or her home and the efforts which were made prior
53 to the filing of the petition to make it possible for the child to
54 return safely home. If such efforts were not made, the petition shall
55 set forth the reasons why these efforts were not made. The petition
56 shall request that, pending any hearing which may be required by the

1 family court judge, a temporary order be made transferring THE TEMPORARY
2 PLACEMENT AND CARE OR the care and custody of the child to the social
3 services official in accordance with the provisions of subdivision three
4 of this section. In the case of a child [whose] WHO HAS EITHER BEEN
5 TRANSFERRED FOR TEMPORARY PLACEMENT AND CARE OR FOR care and custody
6 [have been transferred] to a social services official by means of an
7 instrument executed pursuant to section three hundred eighty-four-a of
8 this chapter, the petition shall also allege and there shall be shown by
9 affidavit or other proof satisfactory to the court that all the require-
10 ments of such section have been satisfied[, including]. IF THE CARE AND
11 CUSTODY OF THE CHILD HAS BEEN TRANSFERRED SUCH REQUIREMENTS SHALL
12 INCLUDE the results of the investigation to locate relatives of the
13 child, including any non-respondent parent and all of the child's grand-
14 parents. Such results shall include whether any relative who has been
15 located expressed an interest in becoming a foster parent for the child
16 or in seeking custody or care of the child.

17 (b) The social services official who initiated the proceeding shall
18 file supplemental information with the clerk of the court not later than
19 ten days prior to the date on which the proceeding is first heard by the
20 court. Such information shall include relevant portions, as determined
21 by the department, of the assessment of the child and his family circum-
22 stances performed and maintained, and the family's service plan if
23 available, pursuant to sections four hundred nine-e and four hundred
24 nine-f of this chapter. Copies of such supplemental information need not
25 be served upon those persons entitled to notice of the proceeding and a
26 copy of the petition pursuant to subdivision four of this section.

27 (2-a) Continuing jurisdiction. (a) The court shall possess continuing
28 jurisdiction over the parties until the child is discharged from place-
29 ment and all orders regarding supervision, protection or services have
30 expired.

31 (b) The court, upon approving an instrument under this section, shall
32 schedule a permanency hearing pursuant to article ten-A of the family
33 court act for a date certain not more than eight months after the place-
34 ment of the child into foster care. Such date certain shall be included
35 in the order approving the instrument.

36 (3) Disposition of petition. (a) If the court is satisfied that the
37 parent, parents or guardian executed such instrument knowingly and
38 voluntarily and because he or she would be unable to make adequate
39 provision for the care, maintenance and supervision of such child in his
40 or her home, and that the requirements of section three hundred eighty-
41 four-a of this chapter, if applicable, have been satisfied and that
42 where appropriate, reasonable efforts were made prior to the placement
43 of the child into foster care to prevent or eliminate the need for
44 removal of the child from his or her home and that prior to the initi-
45 ation of the court proceeding required to be held by subdivision one of
46 this section, reasonable efforts were made to make it possible for the
47 child to return safely to his or her home, the court may find and deter-
48 mine that the best interests and welfare of the child would be promoted
49 by removal of the child from such home, and that it would be contrary to
50 the welfare of such child for the child to continue in such home, and
51 the court shall thereupon grant the petition and approve such instrument
52 and the transfer of the custody and guardianship or THE TRANSFER FOR
53 TEMPORARY PLACEMENT AND CARE OR care and custody of such child to such
54 social services official in accordance therewith. If the court deter-
55 mines that, where appropriate, reasonable efforts were made prior to the
56 placement of the child into foster care to prevent or eliminate the need

1 for removal of the child from his or her home, that prior to the initi-
2 ation of the court proceeding reasonable efforts were made to make it
3 possible for the child to return safely to his or her home, or that it
4 would be contrary to the best interests of the child to continue in the
5 home, or that reasonable efforts to prevent or eliminate the need for
6 removal of the child from the home were not made but that the lack of
7 such efforts was appropriate under the circumstances, the court order
8 shall include such findings. Approval of such instrument in a proceed-
9 ing pursuant to this section shall not constitute a remand or commitment
10 pursuant to this chapter and shall not preclude challenge in any other
11 proceeding to the validity of the instrument. If the permanency plan for
12 the child is adoption, guardianship, permanent placement with a fit and
13 willing relative or another planned permanent living arrangement other
14 than reunification with the parent or parents of the child, the court
15 must consider and determine in its order whether reasonable efforts are
16 being made to make and finalize such alternate permanent placement.

17 (b) For the purpose of this section, reasonable efforts to prevent or
18 eliminate the need for removing the child from the home of the child or
19 to make it possible for the child to return safely to the home of the
20 child shall not be required where the court determines that:

21 (1) the parent of such child has subjected the child to aggravated
22 circumstances, as defined in subdivision twelve of this section;

23 (2) the parent of such child has been convicted of (i) murder in the
24 first degree as defined in section 125.27 or murder in the second degree
25 as defined in section 125.25 of the penal law and the victim was another
26 child of the parent; or (ii) manslaughter in the first degree as defined
27 in section 125.20 or manslaughter in the second degree as defined in
28 section 125.15 of the penal law and the victim was another child of the
29 parent, provided, however, that the parent must have acted voluntarily
30 in committing such crime;

31 (3) the parent of such child has been convicted of an attempt to
32 commit any of the foregoing crimes, and the victim or intended victim
33 was the child or another child of the parent; or has been convicted of
34 criminal solicitation as defined in article one hundred, conspiracy as
35 defined in article one hundred five or criminal facilitation as defined
36 in article one hundred fifteen of the penal law for conspiring, solicit-
37 ing or facilitating any of the foregoing crimes, and the victim or
38 intended victim was the child or another child of the parent;

39 (4) the parent of such child has been convicted of assault in the
40 second degree as defined in section 120.05, assault in the first degree
41 as defined in section 120.10 or aggravated assault upon a person less
42 than eleven years old as defined in section 120.12 of the penal law, and
43 the commission of one of the foregoing crimes resulted in serious phys-
44 ical injury to the child or another child of the parent;

45 (5) the parent of such child has been convicted in any other jurisdic-
46 tion of an offense which includes all of the essential elements of any
47 crime specified in subparagraph two, three or four of this paragraph,
48 and the victim of such offense was the child or another child of the
49 parent; or

50 (6) the parental rights of the parent to a sibling of such child have
51 been involuntarily terminated;

52 unless the court determines that providing reasonable efforts would be
53 in the best interests of the child, not contrary to the health and safe-
54 ty of the child, and would likely result in the reunification of the
55 parent and the child in the foreseeable future. The court shall state
56 such findings in its order.

1 If the court determines that reasonable efforts are not required
2 because of one of the grounds set forth above, a permanency hearing
3 shall be held within thirty days of the finding of the court that such
4 efforts are not required. Such hearing shall be conducted pursuant to
5 section one thousand eighty-nine of the family court act. The local
6 social services official shall thereafter make reasonable efforts to
7 place the child in a timely manner and to complete whatever steps are
8 necessary to finalize the permanent placement of the child as set forth
9 in the permanency plan approved by the court. If reasonable efforts are
10 determined by the court not to be required because of one of the grounds
11 set forth in this paragraph, AND THE LOCAL SOCIAL SERVICES OFFICIAL HAS
12 ACCEPTED AN INSTRUMENT FOR THE TRANSFER OF CARE AND CUSTODY OF THE
13 CHILD, the local social services official may file a petition for termi-
14 nation of parental rights of the parent in accordance with section three
15 hundred eighty-four-b of this chapter. IF THE LOCAL SOCIAL SERVICES
16 OFFICIAL HAS ACCEPTED AN INSTRUMENT FOR THE TRANSFER FOR TEMPORARY
17 PLACEMENT AND CARE OF A CHILD, THE LOCAL SOCIAL SERVICES OFFICIAL SHALL
18 FILE A PETITION FOR THE TRANSFER OF CARE AND CUSTODY OF THE CHILD TO AN
19 AUTHORIZED AGENCY.

20 (c) For the purpose of this section, in determining reasonable efforts
21 to be made with respect to a child, and in making such reasonable
22 efforts, the child's health and safety shall be the paramount concern.

23 (d) For the purpose of this section, a sibling shall include a half-
24 sibling.

25 (e) The order granting the petition of a social services official and
26 approving an instrument executed pursuant to section three hundred
27 eighty-four-a of this chapter may include conditions, where appropriate
28 and specified by the judge, requiring the implementation of a specific
29 plan of action by the social services official to exercise diligent
30 efforts toward the discharge of the child from care, either to his own
31 family or to an adoptive home; provided, however, that such plan shall
32 not include the provision of any service or assistance to the child and
33 his or her family which is not authorized or required to be made avail-
34 able pursuant to the comprehensive annual services program plan then in
35 effect. An order of placement shall include, at the least:

36 (i) a description of the visitation plan;

37 (ii) a direction that the respondent or respondents shall be notified
38 of the planning conference or conferences to be held pursuant to subdivi-
39 sion three of section four hundred nine-e of this chapter, of their
40 right to attend the conference, and of their right to have counsel or
41 other representative or companion with them;

42 A copy of the court's order and the service plan shall be given to the
43 respondent. [The] IF THE CARE AND CUSTODY OF THE CHILD HAS BEEN TRANS-
44 FERRED THE order shall also contain a notice that if the child remains
45 in foster care for more than fifteen of the most recent twenty-two
46 months, the agency may be required by law to file a petition to termi-
47 nate parental rights. IF THE TEMPORARY PLACEMENT AND CARE OF THE CHILD
48 HAS BEEN TRANSFERRED THE ORDER SHALL ALSO CONTAIN A NOTICE THAT IF THE
49 RESPONDENT FAILS TO COMPLY WITH THE REQUIREMENTS SET FORTH IN SUBPARA-
50 GRAPH (V) OF PARAGRAPH (C) OF SUBDIVISION TWO OF SECTION THREE HUNDRED
51 EIGHTY-FOUR-A OF THIS ARTICLE, THE AGENCY SHALL BE REQUIRED TO FILE A
52 PETITION FOR THE TRANSFER OF CARE AND CUSTODY OF THE CHILD TO AN AUTHOR-
53 IZED AGENCY.

54 Nothing in such order shall preclude either party to the instrument
55 from exercising its rights under this section or under any other
56 provision of law relating to the return of the care OR CARE and custody

1 of the child by the social services official to the parent, parents or
2 guardian. Violation of such [on] AN order shall be subject to punishment
3 pursuant to section seven hundred fifty-three of the judiciary law.

4 (f) For a child who has attained the age of fourteen, if the court
5 grants the petition and approves an instrument executed pursuant to
6 section three hundred eighty-four or three hundred eighty-four-a of this
7 chapter and the transfer of custody and guardianship or TRANSFER FOR
8 TEMPORARY PLACEMENT AND CARE OR care and custody of the child to a local
9 social services official the court shall determine in its order the
10 services and assistance needed to assist the child in learning independ-
11 ent living skills.

12 (4) Notice. (a) Upon the filing of a petition pursuant to this
13 section, the family court judge shall direct that service of a notice of
14 the proceeding and a copy of the petition shall be made upon such
15 persons and in such manner as the judge may direct. If the instrument
16 executed by the parent, parents or guardian of a child consents to the
17 jurisdiction of the family court over such proceeding, and waives
18 service of the petition and notice of proceeding, then the family court
19 judge may, in his discretion, dispense with service upon the consenting
20 parent, parents or guardian, provided, however, that a waiver of service
21 of process and notice of the proceeding by a parent or guardian who has
22 transferred EITHER TEMPORARY PLACEMENT AND CARE OR the care and custody
23 of a child to an authorized agency, pursuant to section three hundred
24 eighty-four-a of this chapter, shall be null and void and shall not be
25 given effect by the court. Notice to any parent, parents or guardian who
26 has not executed the instrument shall be required.

27 (b) In the event the family court judge determines that service by
28 publication is necessary and orders service by publication, service
29 shall be made in accordance with the provisions of rule three hundred
30 sixteen of the civil practice law and rules, provided, however, that a
31 single publication of the summons or other process with a notice as
32 specified herein in only one newspaper designated in the order shall be
33 sufficient. In no event shall the whole petition be published. The peti-
34 tion shall be delivered to the person summoned at the first court
35 appearance pursuant to section one hundred fifty-four-a of the family
36 court act. The notice to be published with the summons or other process
37 shall state the date, time, place and purpose of the proceeding.

38 (i) If the petition is initiated to transfer custody and guardianship
39 of a child by an instrument executed pursuant to the provisions of
40 section three hundred eighty-four of this chapter, the notice to be
41 published shall also state that failure to appear may result, without
42 further notice, in the transfer of custody and guardianship of the child
43 to a social services official in this proceeding.

44 (ii) If the petition is initiated to transfer care and custody of a
45 child by an instrument executed pursuant to the provisions of section
46 three hundred eighty-four-a of this chapter, the notice to be published
47 shall also state that failure to appear may result, without further
48 notice, in the transfer of care and custody of the child to a social
49 services official in this proceeding.

50 (5) Hearing and waiver. The instrument may include a consent by the
51 parent, parents or guardian to waiver of any hearing and that a determi-
52 nation may be made by the family court judge based solely upon the peti-
53 tion, and other papers and affidavits, if any, submitted to the family
54 court judge, provided, however, that a waiver of hearing by a parent or
55 guardian who has EITHER transferred TEMPORARY PLACEMENT AND CARE OR the
56 care and custody of a child to an authorized agency, pursuant to section

1 three hundred eighty-four-a of this chapter, shall be effective only if
2 such waiver was executed in an instrument separate from that trans-
3 ferring EITHER TEMPORARY PLACEMENT AND CARE OR the [child's] care and
4 custody OF THE CHILD. In any case where an effective waiver has been
5 executed, the family court judge may dispense with a hearing, approve
6 the instrument and EITHER the transfer of [the] custody and guardianship
7 or THE TRANSFER FOR TEMPORARY PLACEMENT AND CARE OR THE care and custody
8 of the child to the social services official and make the requisite
9 findings and determinations provided for in subdivision three of this
10 section, if it appears to the satisfaction of the family court judge
11 that the allegations in the petition are established sufficiently to
12 warrant the family court judge to grant such petition, to make such
13 findings and determination, and to issue such order.

14 In any case where a hearing is required, the family court judge, if
15 the holding of an immediate hearing on notice is impractical, may forth-
16 with, upon the basis of the instrument and the allegations of the peti-
17 tion, make a temporary finding that the parent, parents, or guardian of
18 the child are unable to make adequate provision for the care, mainte-
19 nance and supervision of such child in the child's own home and that the
20 best interest and welfare of the child will be promoted by the removal
21 of such child from such home and thereupon, the family court judge shall
22 make a temporary order transferring EITHER THE TEMPORARY PLACEMENT AND
23 CARE OR the care and custody of such child to the social services offi-
24 cial, and shall set the matter down for hearing on the first feasible
25 date.

26 (6) Representation. In any case where a hearing is directed by the
27 family court judge, he or she shall, pursuant to section two hundred
28 forty-nine of the family court act, appoint an attorney to represent the
29 child, who shall be admitted to practice law in the state of New York.

30 (7) Return of child. If an instrument provides for the return of the
31 care OR CARE and custody of a child by the local social services offi-
32 cial to the parent, parents or guardian upon any terms and conditions or
33 at any time, the local social services official shall comply with such
34 terms of such instrument without further court order. Every order
35 approving an instrument providing for the transfer of the care OR CARE
36 and custody of a child to a local social services official shall be
37 served upon the parent, parents or guardian who executed such instrument
38 in such manner as the family court judge may provide in such order,
39 together with a notice of the terms and conditions under which the care
40 OR CARE and custody of such child may be returned to the parent, parents
41 or guardian. If an instrument provides for the return of the care OR
42 CARE and custody of a child by the local social services official to the
43 parent, parents or guardian without fixing a definite date for such
44 return, or if the local social services official shall fail to return a
45 child to the care OR CARE and custody of the child's parent, parents or
46 guardian in accordance with the terms of the instrument, the parent,
47 parents or guardian may seek such care OR CARE and custody by motion for
48 return of such child and order to show cause in such proceeding or by
49 writ of habeas corpus in the supreme court. Nothing in this subdivision
50 shall limit the requirement for a permanency hearing pursuant to article
51 ten-A of the family court act.

52 (8) Appealable orders. Any order of a family court denying any peti-
53 tion of a local social services official filed pursuant to this section,
54 or any order of a family court granting or denying any motion filed by a
55 parent, parents or guardian for return of a child pursuant to this

1 section, shall be deemed an order of disposition appealable pursuant to
2 article eleven of the family court act.

3 (9) Duty of social services official. In the event that a family court
4 judge denies a petition of a social services official for approval of an
5 instrument, upon a finding that the welfare of the child would not be
6 promoted by foster care, such social services official shall not accept
7 or retain the care OR CARE and custody as a public charge or custody and
8 guardianship of such child, provided, however, that the denial by a
9 family court judge of a petition of a social services official filed
10 pursuant to this section shall not limit or affect the duty of such
11 social services official to take such other action or offer such
12 services as are authorized by law to promote the welfare and best inter-
13 ests of the child.

14 (10) Visitation rights; non-custodial parents and grandparents. (a)
15 Where a social services official incorporates in an instrument visita-
16 tion rights set forth in an order, judgment or agreement as described in
17 paragraph (d) of subdivision two of section three hundred eighty-four-a
18 of this chapter, such official shall make inquiry of the state central
19 register of child abuse and maltreatment to determine whether or not the
20 person having such visitation rights is a subject or another person
21 named in an indicated report of child abuse or maltreatment, as such
22 terms are defined in section four hundred twelve of this chapter, and
23 shall further ascertain, to the extent practicable, whether or not such
24 person is a respondent in a proceeding under article ten of the family
25 court act whereby the respondent has been alleged or adjudicated to have
26 abused or neglected such child.

27 (b) Where a social services official or the attorney for the child
28 opposes incorporation of an order, judgment or agreement conferring
29 visitation rights as provided for in paragraph (e) of subdivision two of
30 section three hundred eighty-four-a of this chapter, the social services
31 official or attorney for the child shall apply for an order determining
32 that the provisions of such order, judgment or agreement should not be
33 incorporated into the instrument executed pursuant to such section. Such
34 order shall be granted upon a finding, based on competent, relevant and
35 material evidence, that the child's life or health would be endangered
36 by incorporation and enforcement of visitation rights as described in
37 such order, judgment or agreement. Otherwise, the court shall deny such
38 application.

39 (c) Where visitation rights pursuant to an order, judgment or agree-
40 ment are incorporated in an instrument, the parties may agree to an
41 alternative schedule of visitation equivalent to and consistent with the
42 original or modified visitation order, judgment, or agreement where such
43 alternative schedule reflects changed circumstances of the parties and
44 is consistent with the best interests of the child. In the absence of
45 such an agreement between the parties, the court may, in its discretion,
46 upon application of any party or the child's attorney, order an alterna-
47 tive schedule of visitation, as described herein, where it determines
48 that such schedule is necessary to facilitate visitation and to protect
49 the best interests of the child.

50 (d) The order providing an alternative schedule of visitation shall
51 remain in effect for the length of the placement of the child as
52 provided for in such instrument unless such order is subsequently modi-
53 fied by the court for good cause shown. Whenever the court makes an
54 order denying or modifying visitation rights pursuant to this subdivi-
55 sion, the instrument described in section three hundred eighty-four-a of
56 this chapter shall be deemed amended accordingly.

1 (11) Siblings, placement and visitation. (a) In reviewing any petition
2 brought under this section, the court shall inquire if the social
3 services official has arranged for the placement of the child who is the
4 subject of the petition with any minor siblings or half-siblings who are
5 placed in care or, if such children have not been placed together,
6 whether such official has arranged for regular visitation and other
7 forms of regular communication between such child and such siblings.

8 (b) If the court determines that the subject child has not been placed
9 with his or her minor siblings or half-siblings who are in care, or that
10 regular visitation and other forms of regular communication between the
11 subject child and his or her minor siblings or half-siblings has not
12 been provided or arranged for, the court may direct such official to
13 provide or arrange for such placement or regular visitation and communi-
14 cation where the court finds that such placement or visitation and
15 communication is in the child's best interests. Placement or regular
16 visitation and communication with siblings or half-siblings shall be
17 presumptively in the child's best interests unless such placement or
18 visitation and communication would be contrary to the child's health,
19 safety or welfare, or the lack of geographic proximity precludes or
20 prevents visitation.

21 (12) For the purposes of this section, aggravated circumstances means
22 where a child has been either severely or repeatedly abused, as defined
23 in subdivision eight of section three hundred eighty-four-b of this
24 chapter; or where a child has subsequently been found to be an abused
25 child, as defined in paragraph (i) or (iii) of subdivision (e) of
26 section one thousand twelve of the family court act, within five years
27 after return home following placement in foster care as a result of
28 being found to be a neglected child, as defined in subdivision (f) of
29 section one thousand twelve of the family court act, provided that the
30 respondent or respondents in each of the foregoing proceedings was the
31 same; or where the court finds by clear and convincing evidence that the
32 parent of a child in foster care has refused and has failed completely,
33 over a period of at least six months from the date of removal, to engage
34 in services necessary to eliminate the risk of abuse or neglect if
35 returned to the parent, and has failed to secure services on his or her
36 own or otherwise adequately prepare for the return home and, after being
37 informed by the court that such an admission could eliminate the
38 requirement that the local department of social services provide
39 reunification services to the parent, the parent has stated in court
40 under oath that he or she intends to continue to refuse such necessary
41 services and is unwilling to secure such services independently or
42 otherwise prepare for the child's return home; provided, however, that
43 if the court finds that adequate justification exists for the failure to
44 engage in or secure such services, including but not limited to a lack
45 of child care, a lack of transportation, and an inability to attend
46 services that conflict with the parent's work schedule, such failure
47 shall not constitute an aggravated circumstance; or where a court has
48 determined a child five days old or younger was abandoned by a parent
49 with an intent to wholly abandon such child and with the intent that the
50 child be safe from physical injury and cared for in an appropriate
51 manner.

52 S 4. Paragraph (b) of subdivision 1 of section 358-a of the social
53 services law, as amended by chapter 7 of the laws of 1999, is amended to
54 read as follows:

55 (b) The social services official shall initiate the proceeding by
56 filing the petition as soon as practicable, but in no event later than

1 thirty days following removal of the child from the home provided,
2 however, that the court shall receive, hear and determine petitions
3 filed later than thirty days following removal of the child from his or
4 her home, but state reimbursement to the social services district for
5 care and maintenance provided to such child shall be denied pursuant to
6 section one hundred fifty-three-d of this chapter. The social services
7 official shall diligently pursue such proceeding. Where the care and
8 custody OR TEMPORARY PLACEMENT AND CARE of a child as a public charge
9 has been transferred to a social services official by means of an
10 instrument executed pursuant to the provisions of section three hundred
11 eighty-four-a of this chapter for a period of thirty days or less for an
12 indeterminate period which such official deems unlikely to exceed thirty
13 days, and thereafter such official determines that such child will
14 remain in his or her care and custody for a period in excess of thirty
15 days, such official shall, as soon as practicable but in no event later
16 than thirty days following such determination, execute with the child's
17 parent, parents or guardian a new instrument pursuant to the provision
18 of section three hundred eighty-four or three hundred eighty-four-a of
19 this chapter and shall file a petition in family court, pursuant to this
20 section, for approval of such instrument. In such cases involving a
21 social services official, expenditures for the care and maintenance of
22 such child from the date of the initial transfer [of his] FOR EITHER
23 TEMPORARY PLACEMENT AND CARE OR care and custody to the social services
24 official shall be subject to state reimbursement[, notwithstanding the
25 provisions of section one hundred fifty-three-d of this chapter].

26 S 5. Section 384-a of the social services law, as amended by chapter
27 669 of the laws of 1976, subdivision 1 as amended by section 52, subdi-
28 vision 1-b as added by section 53 and paragraph (a) and subparagraph
29 (iii) of paragraph (h) of subdivision 2 as amended by section 54 of part
30 A of chapter 3 of the laws of 2005, subdivision 1-a as amended by chap-
31 ter 671 of the laws of 2005, subdivision 2 as separately amended by
32 chapter 666 of the laws of 1976, paragraph (c) of subdivision 2 as
33 amended by chapter 256 of the laws of 1990, subparagraph (i) of para-
34 graph (c) of subdivision 2 as amended by chapter 69 of the laws of 1991,
35 subparagraph (ix) of paragraph (c) of subdivision 2 as added by chapter
36 7 of the laws of 1999, paragraphs (d) and (e) as added and paragraph (g)
37 of subdivision 2 as relettered and subdivision 3 as amended by chapter
38 457 of the laws of 1988, paragraph (f) of subdivision 2 as amended by
39 chapter 41 of the laws of 2010, paragraph (g) of subdivision 2 as added
40 by chapter 947 of the laws of 1981, and paragraph (h) of subdivision 2
41 as added by chapter 477 of the laws of 2000, is amended to read as
42 follows:

43 S 384-a. Transfer of [care and custody of] children FOR TEMPORARY
44 PLACEMENT AND CARE OR CARE AND CUSTODY. 1. Method. [The care and custo-
45 dy of a child may be transferred by a parent or guardian, and the care
46 of a child may be transferred by any person to whom a parent has
47 entrusted the care of the child, to an authorized agency by a written
48 instrument in accordance with the provisions of this section.] A PARENT
49 OR GUARDIAN MAY EITHER:

50 (A) TRANSFER RESPONSIBILITY FOR TEMPORARY PLACEMENT AND CARE OF A
51 CHILD SO THEY MAY RECEIVE NECESSARY SERVICES FOR AN EMOTIONAL, BEHAV-
52 IORAL OR MENTAL DISORDER, OR MENTAL OR PHYSICAL DISABILITY TO AN AUTHOR-
53 IZED AGENCY BY A WRITTEN INSTRUMENT IN ACCORDANCE WITH THE PROVISIONS OF
54 THIS SECTION; OR

1 (B) TRANSFER THE CARE AND CUSTODY OF A CHILD TO AN AUTHORIZED AGENCY
2 BY A WRITTEN INSTRUMENT IN ACCORDANCE WITH THE PROVISIONS OF THIS
3 SECTION.

4 1-A. THE CARE OF A CHILD MAY ALSO BE TRANSFERRED TO AN AUTHORIZED
5 AGENCY BY ANY PERSON TO WHOM A PARENT HAS ENTRUSTED THE CARE OF THE
6 CHILD. Such transfer by a person who is not the child's parent or guard-
7 ian shall not affect the rights or obligations of the parents or guardi-
8 an, and such transfer shall be deemed a transfer of the care and custody
9 of the child for the purposes of section three hundred fifty-eight-a of
10 this chapter.

11 [1-a.] 1-B. Prior to accepting a transfer of care and custody, a local
12 social services official shall commence a search to locate any non-res-
13 pondent parent of the child and shall conduct an immediate investigation
14 to (a) locate relatives of the child, including all of the child's
15 grandparents, all suitable relatives identified by either and any rela-
16 tive identified by a child over the age of five as a relative who plays
17 or has played a significant positive role in his or her life, and to
18 inform them of the opportunity for becoming foster parents or for seek-
19 ing custody or care of the child, and that the child may be adopted by
20 foster parents if attempts at reunification with the birth parent are
21 not required or are unsuccessful; and to determine whether the child may
22 appropriately be placed with a suitable person related to the child and
23 whether such relative seeks approval as a foster parent pursuant to this
24 chapter for the purposes of providing care for such child, or wishes to
25 provide care and custody for the child until the parent or other person
26 responsible for the care of the child is able to resume custody; and (b)
27 identify minor siblings or half-siblings of the child and to determine
28 whether such siblings or half-siblings have been or are being trans-
29 ferred FOR TEMPORARY PLACEMENT AND CARE OR to the care and custody of
30 such official. Such official shall provide or arrange for the provision
31 of care so as to permit the child and his or her minor siblings or half-
32 siblings to be placed together unless, in the judgment of such official,
33 such placement would be contrary to the best interests of the children;
34 whereupon, such official shall provide or arrange for regular visitation
35 and other forms of regular communication between such children unless,
36 in the judgment of such official, such visitation and communication
37 would be contrary to the best interests of such children. Placement or
38 regular visitation and communication with siblings or half-siblings
39 shall be presumptively in the child's best interests unless such place-
40 ment or visitation and communication would be contrary to the child's
41 health, safety or welfare, or the lack of geographic proximity precludes
42 or prevents visitation.

43 [1-b.] 1-C. Upon accepting the transfer of care and custody of a child
44 from the parent, guardian or other person to whom care of the child has
45 been entrusted, a local social services official shall obtain informa-
46 tion to the extent known from such person regarding the other parent,
47 any person to whom the parent transferring care and custody had been
48 married at the time of the conception or birth of the child and any
49 other person who would be entitled to notice of a proceeding to termi-
50 nate parental rights pursuant to section three hundred eighty-four-c of
51 this title. Such information shall include, but not be limited to, such
52 parent's or person's name, last-known address, social security number,
53 employer's address and any other identifying information. Any informa-
54 tion provided pursuant to this subdivision shall be recorded in the
55 uniform case record maintained pursuant to section four hundred nine-f

1 of this article; provided, however, that the failure to provide such
2 information shall not invalidate the transfer of care and custody.

3 2. Terms. (a) The instrument shall be upon such terms, for such time
4 and subject to such conditions as may be agreed upon by the parties
5 thereto. The office of children and family services may promulgate
6 suggested terms and conditions for inclusion in such instruments, but
7 shall not require that any particular terms and conditions be included.
8 If the instrument provides that the child is to be returned by the
9 authorized agency on a date certain or upon the occurrence of an iden-
10 tifiable event, such agency shall return such child at such time unless
11 such action would be contrary to court order entered at any time prior
12 to such date or event or within ten days thereafter pursuant to section
13 three hundred eighty-four-b of this title or article six, ten, or ten-A
14 of the family court act or unless and so long as the parent or guardian
15 is unavailable or incapacitated to receive the child. The parent or
16 guardian may, upon written notice to such agency, request return of the
17 child at any time prior to the identified date or event[, whereupon]. IF
18 THE RESPONSIBILITY OF THE CHILD HAS BEEN TRANSFERRED FOR TEMPORARY
19 PLACEMENT AND CARE, SUCH AGENCY SHALL RETURN THE CHILD. IF THE CARE AND
20 CUSTODY OF THE CHILD HAS BEEN TRANSFERRED such agency may, without court
21 order, return the child or, within ten days after such request, may
22 notify the parent or guardian that such request is denied. If such agen-
23 cy denies or fails to act upon such request, the parent or guardian may
24 seek return of the care and custody of the child by motion in family
25 court for return of such child and order to show cause, or by writ of
26 habeas corpus in the supreme court or family court. If the instrument
27 fails to specify a date or identifiable event upon which such agency
28 shall return such child, such agency shall return the child within twen-
29 ty days after having received notice that the parent or guardian wishes
30 the child returned, unless such action would be contrary to court order
31 entered at any time prior to the expiration of such twenty day period
32 pursuant to section three hundred eighty-four-b of this title or article
33 six, ten, or ten-A of the family court act. Expenditures by a local
34 social services district for the care and maintenance of a child who has
35 been continued in the care of an authorized agency in violation of the
36 provisions of this subdivision shall not be subject to state reimburse-
37 ment.

38 (b) [No] WHEN THE RESPONSIBILITY OF THE CHILD HAS BEEN TRANSFERRED FOR
39 TEMPORARY PLACEMENT AND CARE NO provisions set forth in any such instru-
40 ment regarding the right of the parent or guardian to visit the child or
41 to have services provided to the child and to the parent or guardian to
42 strengthen the parental relationship may be terminated or limited by the
43 authorized agency [having the care and custody of the child]. WHEN THE
44 CARE AND CUSTODY OF THE CHILD HAS BEEN TRANSFERRED SUCH RIGHTS MAY NOT
45 BE TERMINATED OR LIMITED BY THE AUTHORIZED AGENCY unless: (i) the
46 instrument shall have been amended to so limit or terminate such right,
47 pursuant to subdivision three of this section; or (ii) the right of
48 visitation or to such services would be contrary to or inconsistent with
49 a court order obtained in any proceeding in which the parent or guardian
50 was a party.

51 (c) The instrument shall state, in lay terms, in conspicuous print of
52 at least eighteen point type:

53 (i) that the parent or guardian has the right, prior to signing the
54 instrument transferring EITHER THE RESPONSIBILITY OF THE CHILD FOR
55 TEMPORARY PLACEMENT AND CARE OR TRANSFERRING the care and custody of the
56 child to an authorized agency, to legal representation of the parent's

own choosing. The agency shall provide the parent or guardian with a list of attorneys or legal services organizations, if any, which provide free legal services to persons unable to otherwise obtain such services;

(ii) that the parent or guardian MAY EITHER TRANSFER THE CARE AND CUSTODY OF THE CHILD, OR TRANSFER THE RESPONSIBILITY OF THE CHILD FOR TEMPORARY PLACEMENT AND CARE BUT has no legal obligation to transfer the [care and custody of the] child to such official, and will incur no legal sanction for failing to do so;

(iii) that the law permits the instrument to specify a date certain or an identifiable event upon which the child is to be returned, and if no date or event is specified, that the parent or guardian has a right to the return of the child within twenty days of a request for return, unless otherwise ordered by the court; and to otherwise have the child returned in accordance with the terms of the instrument and the provisions of this section;

(iv) that the parent or guardian has a right to supportive services, which shall include preventive and other supportive services authorized to be provided pursuant to the state's consolidated services plan, to visit the child, and to determine jointly with the agency the terms and frequency of visitation;

(v) that the parent or guardian, subject to the terms of the instrument, has an obligation

(A) to visit the child,

(B) to plan for the future of the child,

(C) to meet with and consult with the agency about such plan,

(D) to contribute to the support of the child to the extent of his or her financial ability to do so, and

(E) to inform the agency of any change of name and address;

(vi) [that] IF THE CARE AND CUSTODY OF THE CHILD HAS BEEN TRANSFERRED the failure of the parent or guardian to meet the obligations listed in subparagraph (v) OF THIS PARAGRAPH could be the basis for a court proceeding for the commitment of the guardianship and custody of the child to an authorized agency thereby terminating parental rights;

(vii) IF THE RESPONSIBILITY OF THE CHILD HAS BEEN TRANSFERRED FOR TEMPORARY PLACEMENT AND CARE THE FAILURE OF THE PARENT OR GUARDIAN TO MEET THE OBLIGATIONS LISTED IN SUBPARAGRAPH (V) OF THIS PARAGRAPH MAY BE THE BASIS FOR A PETITION TO THE COURT FOR TRANSFER OF CARE AND CUSTODY OF THE CHILD TO AN AUTHORIZED AGENCY;

(VIII) that the parent or guardian has a right to a fair hearing pursuant to section twenty-two of this chapter concerning the agency's failure to permit the parent or guardian to visit the child or to provide supportive services, which shall include preventive and other supportive services authorized to be provided pursuant to the state's consolidated services plan, to the child and to the parent or guardian;

[(viii)] (IX) the amount of money which the parent will periodically contribute to the support of the child and the schedule for such payments, if known.

[(ix) that if] (X) IF THE CARE AND CUSTODY OF THE CHILD HAS BEEN TRANSFERRED AND 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) In any case where a parent who has transferred EITHER THE RESPONSIBILITY OF A CHILD FOR TEMPORARY PLACEMENT AND CARE OR TRANSFERRED care and custody of a child to a social services official pursuant to this section informs the social services official that an order or judgment conferring visitation rights relating to the child has been entered by

1 the family court or supreme court or that a written agreement as
2 described in section two hundred thirty-six of the domestic relations
3 law between the parents confers such rights, any instrument executed
4 pursuant to this section shall incorporate the provisions of such order,
5 judgment or agreement to the extent that visitation rights are affected
6 and shall provide for visitation or other rights as required by such
7 order, judgment or agreement. Such incorporation shall not preclude a
8 social services official from exercising his authority pursuant to para-
9 graph (e) or (f) of this subdivision.

10 (e) Where a social services official opposes incorporation of an
11 order, judgment or agreement described in paragraph (d) of this subdivi-
12 sion, such official may, upon execution of the instrument described in
13 this section and upon notice to the non-custodial parent or grandparent
14 named in such order, judgment or agreement, be heard thereon in a
15 proceeding pursuant to section three hundred fifty-eight-a of this chap-
16 ter.

17 (f) Nothing in this section shall be deemed to prohibit a social
18 services official or an attorney for the child, if any, from making an
19 application to modify the terms of a visitation order, incorporated
20 pursuant to this section, for good cause shown, upon notice to all
21 interested parties, or to limit the right of a non-custodial parent or
22 grandparent to seek visitation pursuant to applicable provisions of law.

23 (g) In the event a child whose care and custody is transferred pursu-
24 ant to this section is admitted to a hospital operated or licensed by
25 the office of mental health and cannot be returned to the physical
26 custody of his or her parent or guardian upon request because, pursuant
27 to section four hundred of this chapter, the medical director of the
28 facility has not authorized the removal of the child, the child shall
29 nonetheless be deemed to have been returned to the legal care and custo-
30 dy of his or her parent or guardian. Expenditures by a social services
31 district for the care and maintenance of such a child shall be subject
32 to state reimbursement notwithstanding the provisions of section one
33 hundred fifty-three-b of this chapter.

34 (h) (i) Where a local social services official determines that a child
35 is at significant risk of placement in the care and custody of the local
36 commissioner of social services during the eighteen months immediately
37 following review by such official because the custodial parent or legal
38 guardian of such child is suffering from a progressively chronic or
39 irreversibly fatal illness and it is determined that there is neither a
40 relative nor a close friend identified by the custodial parent or the
41 legal guardian able to assume legal guardianship of the child, the
42 custodial parent or legal guardian shall be assisted by the local social
43 services district in transferring the care and custody of the child to
44 an authorized agency by a written instrument in accordance with the
45 provisions for this section which provides the transfer shall not take
46 effect until the parent or legal guardian dies, becomes debilitated or
47 incapacitated as defined in subdivision one of section seventeen hundred
48 twenty-six of the surrogate's court procedure act.

49 (ii) Where a local social services official determines that a child is
50 at significant risk of placement in the care and custody of the local
51 commissioner of social services during the eighteen months immediately
52 following a review of such official because the custodial parent or
53 legal guardian is suffering from a progressively chronic or irreversibly
54 fatal illness and there is a relative or close friend identified by the
55 custodial parent or legal guardian who is able and willing to assume
56 care and custody of the child, but who requires foster care services and

1 financial support thereof pursuant to section three hundred ninety-
2 eight-a of this article, the custodial parent or legal guardian shall be
3 assisted by the local social services district in transferring the care
4 and custody of the child to an authorized agency by a written instrument
5 in accordance with the provisions of this section. Such instrument shall
6 provide that the transfer of custody shall not take effect until the
7 parent or legal guardian dies, becomes debilitated or incapacitated as
8 defined in subdivision one of section seventeen hundred twenty-six of
9 the surrogate's court procedure act. If otherwise qualified, the social
10 services official shall assist the person identified to accept care and
11 custody of the child to become certified as a foster parent.

12 (iii) A local social services official who accepts or proposes to
13 accept the care and custody of a child by means of a written instrument
14 executed pursuant to this paragraph, shall, pursuant to section three
15 hundred fifty-eight-a of this chapter, petition the family court of the
16 county or city in which the local social services official has his or
17 her office to approve such written instrument. A written instrument
18 executed pursuant to this paragraph and approved pursuant to section
19 three hundred fifty-eight-a of this chapter shall be in effect until the
20 court reviews the child's placement pursuant to article ten-A of the
21 family court act. The status of a child subject to such an instrument
22 shall be reviewed by the court pursuant to article ten-A of the family
23 court act.

24 (iv) Upon receiving a notice from the custodial parent or the legal
25 guardian that the parent or legal guardian is no longer debilitated or
26 incapacitated and that the parent or legal guardian requests the immedi-
27 ate return of the child, the social services district shall return such
28 child to the parent or legal guardian within ten days of receiving
29 notice, except where a contrary court order has been issued pursuant to
30 part two, five or seven of article ten of the family court act.

31 3. Amendment. (a) The parties to the instrument or anyone acting on
32 their behalf with their consent may amend it by mutual consent but only
33 by a supplemental instrument executed in the same manner as the original
34 instrument. The supplemental instrument shall be attached to, and become
35 part of, the original instrument. The supplemental instrument shall
36 contain the recitation required in paragraph (c) of subdivision two of
37 this section.

38 (b) The instrument shall also be deemed amended where ordered by the
39 family court pursuant to the provisions of paragraph (d) of subdivision
40 ten of section three hundred fifty-eight-a of this chapter.

41 4. Execution. The instrument shall be executed in the presence of one
42 or more witnesses and shall include only the provisions, terms and
43 conditions agreed upon by the parties thereto.

44 5. Records. The instrument shall be kept in a file maintained for that
45 purpose by the agency accepting the care and custody of the child. A
46 copy of the instrument shall be given to the parent or guardian at the
47 time of the execution of the instrument.

48 6. An instrument executed pursuant to the provisions of this section
49 shall not constitute a remand or commitment pursuant to this chapter.

50 S 6. The office of children and family services shall, within six
51 months of the effective date of this act:

52 (a) amend its internal policies, manuals and practices to comply with
53 the provisions of this act;

54 (b) make every effort to ensure that local social services districts
55 comply with the provisions of this act; and

1 (c) initiate formal proceedings to amend its rules and regulations
2 including, but not limited to, section 430.10 of title 18 of the offi-
3 cial compilation of codes, rules and regulations of the state of New
4 York.

5 S 7. The commissioner of the office of children and family services
6 shall submit two reports to the governor and the legislature, the first
7 of which shall be delivered eighteen months after the effective date of
8 this act and the second report shall be delivered thirty-six months
9 after the first report which shall include:

10 (a) an analysis of the impact of this act on local social services
11 districts to include but not be limited to obstacles to implementation,
12 changes in parental attitudes and/or participation in planning for their
13 child, impact on placement outcomes, and recommendations; and

14 (b) related feedback and recommendations from parents who have sought
15 to retain custody of their children being placed by a local social
16 services official, when the primary reason for such placement is the
17 provision of necessary services for the child's emotional, behavioral or
18 mental disorder.

19 S 8. This act shall take effect immediately; provided that the amend-
20 ments to paragraph (b) of subdivision 1 of section 358-a of the social
21 services law made by section three of this act shall be subject to the
22 expiration and reversion of such paragraph pursuant to section 28 of
23 part C of chapter 83 of the laws of 2002, as amended when upon such date
24 the provisions of section four of this act shall take effect.