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I N   S E N A T E

March 1, 2016

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Introduced by Sen. AVELLA -- (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 and the social services law, in relation to contact by siblings in child protective, permanency and termination of parental rights proceedings

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

1     Section 1. Section 1027-a of the family court act, as added by chapter  
2     854 of the laws of 1990, is amended to read as follows:  
3     S 1027-a. Placement of siblings; CONTACT WITH SIBLINGS. (A) When a  
4     social services official removes a child pursuant to this part, such  
5     official shall place such child with his or her minor siblings or half-  
6     siblings who have been or are being remanded to or placed in the care  
7     and custody of such official unless, in the judgment of such official,  
8     such placement is contrary to the best interests of the children. Place-  
9     ment with siblings or half-siblings shall be presumptively in the  
10    child's best interests unless such placement would be contrary to the  
11    child's health, safety, or welfare. If such placement is not immediately  
12    available at the time of the removal of the child, such official shall  
13    provide or arrange for the provision of such placement within thirty  
14    days.  
15    (B) IF PLACEMENT OF A CHILD REMOVED PURSUANT TO THIS PART TOGETHER  
16    WITH HIS OR HER MINOR SIBLINGS IS NOT IN THE BEST INTERESTS OF THE  
17    CHILD, THE SOCIAL SERVICES OFFICIAL SHALL ARRANGE APPROPRIATE AND REGU-  
18    LAR CONTACT BY THE CHILD WITH HIS OR HER MINOR SIBLINGS AND HALF-SI-  
19    BLINGS UNLESS SUCH CONTACT WOULD NOT BE IN THE CHILD'S AND THE SIBLINGS'  
20    BEST INTERESTS.  
21    (C) IF A CHILD REMOVED PURSUANT TO THIS PART IS NOT PLACED TOGETHER OR  
22    AFFORDED REGULAR CONTACT WITH HIS OR HER SIBLINGS, THE CHILD, THROUGH  
23    HIS OR HER ATTORNEY OR THROUGH A PARENT ON HIS OR HER BEHALF, MAY MOVE  
24    FOR AN ORDER REGARDING PLACEMENT OR CONTACT. THE MOTION SHALL BE SERVED  
25    UPON: (I) THE RESPONDENT IN THE PROCEEDING UNDER THIS ARTICLE; (II) THE  
26    LOCAL SOCIAL SERVICES OFFICIAL HAVING THE CARE OF THE CHILD; (III) OTHER

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

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1 PERSONS HAVING CARE, CUSTODY AND CONTROL OF THE CHILD, IF ANY; (IV) THE  
2 PARENTS OR OTHER PERSONS HAVING CARE, CUSTODY AND CONTROL OF THE  
3 SIBLINGS TO BE VISITED OR WITH WHOM CONTACT IS SOUGHT; (V) ANY NON-RES-  
4 PONDENT PARENT IN THE PROCEEDING UNDER THIS ARTICLE; (VI) SUCH SIBLING  
5 HIMSELF OR HERSELF IF TEN YEARS OF AGE OR OLDER; AND (VII) SUCH  
6 SIBLING'S ATTORNEY, IF ANY. FOR PURPOSES OF THIS SECTION, "SIBLINGS"  
7 SHALL INCLUDE HALF-SIBLINGS AND THOSE WHO WOULD BE DEEMED SIBLINGS OR  
8 HALF-SIBLINGS BUT FOR THE TERMINATION OF PARENTAL RIGHTS OR DEATH OF A  
9 PARENT. THE COURT MAY ORDER THAT THE CHILD BE PLACED TOGETHER WITH OR  
10 HAVE REGULAR CONTACT WITH HIS OR HER SIBLINGS IF THE COURT DETERMINES IT  
11 TO BE IN THE BEST INTERESTS OF THE CHILD AND HIS OR HER SIBLINGS.

12 S 2. Subdivision (c) of section 1055 of the family court act, as  
13 amended by chapter 437 of the laws of 2006, is amended to read as  
14 follows:

15 (c) In addition to or in lieu of an order of placement made pursuant  
16 to subdivision (b) of this section, the court may make an order direct-  
17 ing a child protective agency, social services official or other duly  
18 authorized agency to undertake diligent efforts to encourage and  
19 strengthen the parental relationship when it finds such efforts will not  
20 be detrimental to the best interests of the child. Such efforts shall  
21 include encouraging and facilitating visitation with the child by the  
22 parent or other person legally responsible for the child's care. Such  
23 order may include a specific plan of action for such agency or official  
24 including, but not limited to, requirements that such agency or official  
25 assist the parent or other person responsible for the child's care in  
26 obtaining adequate housing, employment, counseling, medical care or  
27 psychiatric treatment. Such order shall also include encouraging and  
28 facilitating visitation with the child by the non-custodial parent and  
29 grandparents who have obtained orders pursuant to part eight of this  
30 article, and may include encouraging and facilitating visitation with  
31 the child by the child's siblings. THE ORDER MAY INCORPORATE AN ORDER,  
32 IF ANY, ISSUED PURSUANT TO SUBDIVISION (C) OF SECTION ONE THOUSAND TWEN-  
33 TY-SEVEN-A OR ONE THOUSAND EIGHTY-ONE OF THIS ARTICLE, PROVIDED THAT  
34 SUCH VISITATION OR CONTACT IS IN THE BEST INTERESTS OF THE CHILD AND HIS  
35 OR HER SIBLINGS. FOR PURPOSES OF THIS SECTION, "SIBLINGS" SHALL INCLUDE  
36 HALF-SIBLINGS AND THOSE WHO WOULD BE DEEMED SIBLINGS OR HALF-SIBLINGS  
37 BUT FOR THE TERMINATION OF PARENTAL RIGHTS OF DEATH OF A PARENT. Nothing  
38 in this subdivision shall be deemed to limit the authority of the court  
39 to make an order pursuant to section two hundred fifty-five of this act.

40 S 3. Section 1081 of the family court act, as added by chapter 457 of  
41 the laws of 1988 and subdivision 4 as amended by chapter 41 of the laws  
42 of 2010, is amended to read as follows:

43 S 1081. Visitation rights. 1. A non-custodial parent or grandparent  
44 shall have the visitation rights with a child remanded or placed in the  
45 care of a social services official pursuant to this article as conferred  
46 by order of the family court or by any order or judgment of the supreme  
47 court, or by written agreement between the parents as described in  
48 section two hundred thirty-six of the domestic relations law, subject to  
49 the provisions of section one thousand eighty-two of this part.

50 2. (A) A non-custodial parent or any grandparent or grandparents who  
51 have not been afforded the visitation rights described in subdivision  
52 one of this section[,] shall have the right to petition the court for  
53 enforcement of visitation rights with a child remanded or placed in the  
54 care of a social services official pursuant to this article, as such  
55 visitation rights have been conferred by order of the family court or by  
56 any order or judgment of the supreme court, or by written agreement

1 between the parents as described in section two hundred thirty-six of  
2 the domestic relations law.

3 (B) A CHILD REMANDED OR PLACED IN THE CARE OF A SOCIAL SERVICES OFFI-  
4 CIAL PURSUANT TO THIS ARTICLE SHALL HAVE THE RIGHT TO MOVE FOR VISITA-  
5 TION AND CONTACT WITH HIS OR HER SIBLINGS. THE SIBLINGS OF A CHILD  
6 REMANDED OR PLACED IN THE CARE OF A SOCIAL SERVICES OFFICIAL PURSUANT TO  
7 THIS ARTICLE SHALL HAVE A RIGHT TO PETITION THE COURT FOR VISITATION AND  
8 CONTACT WITH SUCH CHILD. FOR PURPOSES OF THIS SECTION, "SIBLINGS" SHALL  
9 INCLUDE HALF-SIBLINGS AND THOSE WHO WOULD BE DEEMED SIBLINGS OR HALF-SI-  
10 BLINGS BUT FOR THE TERMINATION OF PARENTAL RIGHTS OR DEATH OF A PARENT.

11 3. (a) The petition by a non-custodial parent shall allege that such  
12 parent has visitation rights conferred by order of the family court or  
13 by any order or judgment of the supreme court or by written agreement  
14 between the parents as described in section two hundred thirty-six of  
15 the domestic relations law, shall have a copy of such order, judgment or  
16 agreement attached thereto, shall request enforcement of such rights  
17 pursuant to this part, and shall state, when known by the petitioner,  
18 that visitation rights with the child by any grandparent or grandparents  
19 have been conferred by order of the supreme court or family court pursu-  
20 ant to section seventy-two or two hundred forty of the domestic  
21 relations law, and shall provide the name and address of such grandpar-  
22 ent or grandparents.

23 (b) A petition by a grandparent or grandparents shall allege that such  
24 grandparent or grandparents have been granted visitation rights with the  
25 child pursuant to section seventy-two or two hundred forty of the domes-  
26 tic relations law, or subdivision (b) of section six hundred fifty-one  
27 of this act, shall have a copy of such order or judgment attached there-  
28 to, and shall request enforcement of such rights pursuant to this part.

29 (C) A MOTION BY A CHILD REMANDED OR PLACED IN THE CARE OF A SOCIAL  
30 SERVICES OFFICIAL PURSUANT TO THIS ARTICLE OR A PETITION BY A SIBLING OF  
31 SUCH CHILD SHALL ALLEGE THAT VISITATION AND CONTACT WOULD BE IN THE BEST  
32 INTERESTS OF BOTH THE CHILD WHO HAS BEEN REMANDED OR PLACED AND THE  
33 CHILD'S SIBLING.

34 4. [The] (A) A petition FILED UNDER PARAGRAPHS (A) OR (B) OF SUBDIVI-  
35 SION THREE OF THIS SECTION shall be served upon the respondent in a  
36 proceeding under this article, the local social services official having  
37 the care of the child, any grandparent or grandparents named in the  
38 petition as having visitation rights conferred by court order pursuant  
39 to section seventy-two or two hundred forty of the domestic relations  
40 law, and upon the child's attorney. The petition shall be served in such  
41 manner as the court may direct.

42 (B) A PETITION OR MOTION FILED UNDER PARAGRAPH (C) OF SUBDIVISION  
43 THREE OF THIS SECTION SHALL BE SERVED UPON: (I) THE RESPONDENT IN THE  
44 PROCEEDING UNDER THIS ARTICLE; (II) THE LOCAL SOCIAL SERVICES OFFICIAL  
45 HAVING THE CARE OF THE CHILD; (III) OTHER PERSONS HAVING CARE, CUSTODY  
46 AND CONTROL OF THE CHILD, IF ANY; (IV) THE PARENTS OR OTHER PERSONS  
47 HAVING CARE, CUSTODY AND CONTROL OF THE SIBLING TO BE VISITED OR WITH  
48 WHOM CONTACT IS SOUGHT; (V) ANY NON-RESPONDENT PARENT IN THE PROCEEDING  
49 UNDER THIS ARTICLE; (VI) SUCH SIBLING HIMSELF OR HERSELF IF TEN YEARS OF  
50 AGE OR OLDER; AND (VII) SUCH SIBLING'S ATTORNEY, IF ANY. THE PETITION  
51 OR MOTION SHALL BE SERVED IN SUCH MANNER AS THE COURT MAY DIRECT.

52 5. (A) Upon receipt of [such] A petition FILED UNDER PARAGRAPHS (A) OR  
53 (B) OF SUBDIVISION THREE OF THIS SECTION, the court shall, subject to  
54 the provisions of section one thousand eighty-two of this part, require  
55 that any order of a family court or order or judgment of the supreme  
56 court, or any agreement between the parents as described in subdivision

1 one of this section, granting visitation rights to the non-custodial  
2 parent, grandparent or grandparents, be incorporated in any preliminary  
3 order or order of placement made under this article to the extent that  
4 such order, judgment or agreement confers visitation rights. In any case  
5 where a dispositional hearing has not been held or will not be held  
6 within thirty days of the filing of such petition the court shall order  
7 the person, official, agency or institution caring for the child pursu-  
8 ant to this article to comply with such part of the order, judgment or  
9 agreement granting visitation rights.

10 (B) UPON RECEIPT OF A PETITION OR MOTION FILED UNDER PARAGRAPH (C) OF  
11 SUBDIVISION THREE OF THIS SECTION, THE COURT SHALL DETERMINE, AFTER  
12 GIVING NOTICE AND AN OPPORTUNITY TO BE HEARD TO PERSONS SERVED UNDER  
13 SUBDIVISION FOUR OF THIS SECTION, WHETHER VISITATION AND CONTACT WOULD  
14 BE IN THE BEST INTERESTS OF THE CHILD AND HIS OR HER SIBLING. THE  
15 COURT'S DETERMINATION MAY BE INCLUDED IN THE DISPOSITIONAL ORDER ISSUED  
16 PURSUANT TO SECTION ONE THOUSAND FIFTY-TWO OF THIS ARTICLE.

17 (C) Violation of [such] AN order ISSUED UNDER THIS SECTION shall be  
18 punishable pursuant to section seven hundred fifty-three of the judici-  
19 ary law.

20 S 4. Clause (F) of subparagraph (viii) of paragraph 2 of subdivision  
21 (d) of section 1089 of the family court act, as added by section 27 of  
22 part A of chapter 3 of the laws of 2005, is amended to read as follows:

23 (F) The court may make an order directing a local social services  
24 district or agency to undertake diligent efforts to encourage and  
25 strengthen the parental relationship when it finds such efforts will not  
26 be detrimental to the best interests of the child and there has been no  
27 prior court finding that such efforts are not required. Such efforts  
28 shall include encouraging and facilitating visitation with the child by  
29 the parent or other person legally responsible for the child's care.  
30 Such order may include a specific plan of action for the local social  
31 services district or agency including, but not limited to, requirements  
32 that such agency assist the parent or other person legally responsible  
33 for the child's care in obtaining adequate housing, employment, coun-  
34 seling, medical care or psychiatric treatment. Such order shall also  
35 include encouraging and facilitating visitation with the child by the  
36 noncustodial parent and grandparents who have the right to visitation  
37 pursuant to section one thousand eighty-one of this act[, and]. SUCH  
38 ORDER may ALSO include encouraging and facilitating visitation with the  
39 child by the child's siblings AND MAY INCORPORATE AN ORDER, IF ANY,  
40 ISSUED PURSUANT TO SECTION ONE THOUSAND TWENTY-SEVEN-A OR ONE THOUSAND  
41 EIGHTY-ONE OF THIS ACT. FOR PURPOSES OF THIS SECTION, "SIBLINGS" SHALL  
42 INCLUDE HALF-SIBLINGS AND THOSE WHO WOULD BE DEEMED SIBLINGS OR HALF-SI-  
43 BLINGS BUT FOR THE TERMINATION OF PARENTAL RIGHTS OR DEATH OF A PARENT.  
44 Nothing in this subdivision shall be deemed to limit the authority of  
45 the court to make an order pursuant to section two hundred fifty-five of  
46 this act.

47 S 5. Subparagraph (v) of paragraph (1) of subdivision 3 and subdivi-  
48 sion 9 of section 384-b of the social services law, subparagraph (v) of  
49 paragraph (1) of subdivision 3 as added by chapter 113 of the laws of  
50 2010 and subdivision 9 as amended by section 58 of part A of chapter 3  
51 of the laws of 2005, are amended to read as follows:

52 (v) For the purposes of clause (D) of subparagraph (i) of this para-  
53 graph, an assessment of whether a parent maintains a meaningful role in  
54 his or her child's life shall be based on evidence, which may include  
55 the following: a parent's expressions or acts manifesting concern for  
56 the child, such as letters, telephone calls, visits, and other forms of

1 communication with the child; efforts by the parent to communicate and  
2 work with the authorized agency, [law guardian] ATTORNEY FOR THE CHILD,  
3 foster parent, the court, and the parent's attorney or other individuals  
4 providing services to the parent, including correctional, mental health  
5 and substance abuse treatment program personnel for the purpose of  
6 complying with the service plan and repairing, maintaining or building  
7 the parent-child relationship; a positive response by the parent to the  
8 authorized agency's diligent efforts as defined in paragraph (f) of  
9 subdivision seven of this section; and whether the continued involvement  
10 of the parent in the child's life is in the child's best interest. In  
11 assessing whether a parent maintains a meaningful role in his or her  
12 child's life, the authorized agency shall gather input from individuals  
13 and agencies in a reasonable position to help make this assessment,  
14 including but not limited to, the authorized agency, [law guardian]  
15 ATTORNEY FOR THE CHILD, parent, child, foster parent or other individ-  
16 uals of importance in the child's life, and parent's attorney or other  
17 individuals providing services to the parent, including correctional,  
18 mental health and substance abuse treatment program personnel. The court  
19 may make an order directing the authorized agency to undertake further  
20 steps to aid in completing its assessment.

21 9. Nothing in this section shall be construed to terminate, upon  
22 commitment of the guardianship and custody of a child to an authorized  
23 agency or foster parent, any rights and benefits, including but not  
24 limited to rights relating to CONTACT WITH SIBLINGS, inheritance,  
25 succession, social security, insurance and wrongful death action claims,  
26 possessed by or available to the child pursuant to any other provision  
27 of law. FOR PURPOSES OF THIS SECTION, "SIBLINGS" SHALL INCLUDE HALF-SI-  
28 BLINGS AND THOSE WHO WOULD BE DEEMED SIBLINGS OR HALF-SIBLINGS BUT FOR  
29 THE TERMINATION OF PARENTAL RIGHTS OR DEATH OF A PARENT. Notwithstanding  
30 any other provision of law, a child committed to the custody and guardi-  
31 anship of an authorized agency pursuant to this section shall be deemed  
32 to continue in foster care until such time as an adoption or another  
33 planned permanent living arrangement is finalized. Where the disposition  
34 ordered is the commitment of guardianship and custody pursuant to this  
35 section, an initial freed child permanency hearing shall be held pursu-  
36 ant to section one thousand eighty-nine of the family court act.

37 S 6. This act shall take effect on the ninetieth day after it shall  
38 have become a law and shall apply to petitions filed on or after such  
39 date.