

STATE OF NEW YORK

5472

2017-2018 Regular Sessions

IN SENATE

March 30, 2017

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, in relation to reentry of former foster care children into foster care

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 6 of section 355.3 of the family court act, as
2 amended by chapter 663 of the laws of 1985, is amended to read as
3 follows:

4 6. Successive extensions of placement under this section may be grant-
5 ed, but no placement may be made or continued beyond the respondent's
6 eighteenth birthday without [~~the child's~~] his or her consent and in no
7 event past [~~the child's~~] his or her twenty-first birthday. A respondent
8 who has attained the age of eighteen but is less than twenty years of
9 age may move or, with his or her consent, may be the subject of a motion
10 to reenter foster care in accordance with the provisions of section one
11 thousand ninety-one of this act, provided that:

12 (i) the respondent was either discharged from foster care on or after
13 attaining the age of eighteen due to a failure to consent to the contin-
14 uation of placement or was discharged from foster care on or after
15 attaining the age of sixteen but who is or is likely to be homeless
16 unless returned to foster care; and

17 (ii) where the respondent had been previously placed or transferred
18 into placement with a local social services district pursuant to this
19 section or section 353.3 or 355.1 of this part, the motion may be made
20 by a social services official; or where the respondent had been previ-
21 ously placed with the state office of children and family services for a
22 non-secure or limited secure level of care pursuant to this section or
23 section 353.3 or 355.1 of this part where the placement was made in a
24 county that does not have an approved "close to home" program, the

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

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1 motion may be made by an official of the state office of children and
2 family services.

3 § 2. Subdivision (f) of section 756-a of the family court act, as
4 added by chapter 604 of the laws of 1986, is amended to read as follows:

5 (f) Successive extensions of placement under this section may be
6 granted, but no placement may be made or continued beyond the child's
7 eighteenth birthday without his or her consent and in no event past his
8 or her twenty-first birthday. A child who was previously placed with a
9 local social services district pursuant to section seven hundred fifty-
10 six of this part and who was discharged from foster care on or after
11 attaining the age of eighteen due to a failure to consent to continua-
12 tion of placement or was discharged from foster care on or after attain-
13 ing the age of sixteen but who is or is likely to be homeless unless
14 returned to foster care may move, or, with his or her consent, may be
15 the subject of a motion by a social services official to reenter foster
16 care in accordance with the provisions of section one thousand ninety-
17 one of this act.

18 § 3. Section 1088 of the family court act, as amended by chapter 605
19 of the laws of 2011, is amended to read as follows:

20 § 1088. Continuing court jurisdiction. (a) If a child is placed pursu-
21 ant to section three hundred fifty-eight-a, three hundred eighty-four,
22 or three hundred eighty-four-a of the social services law, or pursuant
23 to section one thousand seventeen, one thousand twenty-two, one thousand
24 twenty-seven, one thousand fifty-two, one thousand eighty-nine, one
25 thousand ninety-one, one thousand ninety-four or one thousand ninety-
26 five of this act, or directly placed with a relative pursuant to section
27 one thousand seventeen or one thousand fifty-five of this act; or if the
28 child is freed for adoption pursuant to section six hundred thirty-seven
29 of this act or section three hundred eighty-three-c, three hundred
30 eighty-four or three hundred eighty-four-b of the social services law,
31 the case shall remain on the court's calendar and the court shall main-
32 tain jurisdiction over the case until the child is discharged from
33 placement and all orders regarding supervision, protection or services
34 have expired.

35 (b) The court shall rehear the matter whenever it deems necessary or
36 desirable, or upon motion by any party entitled to notice in proceedings
37 under this article, or by the attorney for the child, and whenever a
38 permanency hearing is required by this article. While the court main-
39 tains jurisdiction over the case, the provisions of section one thousand
40 thirty-eight of this act shall continue to apply.

41 (c) The court shall also maintain jurisdiction over a case for
42 purposes of hearing a motion to permit a former foster care youth [~~under~~
43 ~~the age of twenty-one who was discharged from foster care due to a fail-~~
44 ~~ure to consent to continuation of placement], as defined in subdivision~~
45 (a) of section one thousand ninety-one of this act, to return to the
46 custody of the [~~local commissioner of~~] social services [~~or other offi-~~
47 ~~cer, board or department authorized to receive children as public charg-~~
48 ~~es~~] district from which the youth was most recently discharged, or, in
49 the case of a child freed for adoption, the authorized agency into whose
50 custody and guardianship the child has been placed.

51 § 4. Section 1091 of the family court act, as added by chapter 342 of
52 the laws of 2010, is amended to read as follows:

53 § 1091. Motion to return to foster care placement. (a) For purposes
54 of this article, "former foster care youth" shall mean a youth who has
55 attained the age of eighteen but is under the age of twenty-one and who
56 had been:

(1) discharged from foster care on or after attaining the age of eighteen due to a failure to consent to continuation in foster care or discharged from foster care on or after attaining the age of sixteen but who is or is likely to be homeless unless returned to foster care; and

(2)(i) placed in foster care with a local social services district pursuant to article three, seven, ten, ten-A or ten-C of this act or section three hundred fifty-eight-a of the social services law; or

(ii) freed for adoption in accordance with section six hundred thirty-seven of this act or section three hundred eighty-three-c, three hundred eighty-four or three hundred eighty-four-b of the social services law but has not yet been adopted; or

(iii) the subject of a motion to restore parental rights that had been conditionally granted pursuant to paragraph (iii) of subdivision (b) of section six hundred thirty-seven of this act; or

(iv) placed with the office of children and family services for a non-secure or limited secure level of care pursuant to section 353.3, 355.1 or 355.3 of this act where the placement was made in a county that does not have an approved "close to home" program.

(b) A motion to return a former foster care youth [under the age of twenty-one, who was discharged from foster care due to a failure to consent to continuation of placement,] to the custody of the [local commissioner of] social services [or other officer, board or department authorized to receive children as public charges] district from which the youth was most recently discharged, or, in the case of a youth placed with the office of children and family services in accordance with subparagraph (iv) of paragraph two of subdivision (a) of this section, the commissioner of children and family services, or, in the case of a child freed for adoption, the social services district or authorized agency into whose custody and guardianship the child has been placed, may be made by such former foster care youth, or by [a] the applicable official of the local social services [official] district, authorized agency or the office of children and family services upon the consent of such former foster care youth, if there is a compelling reason for such former foster care youth to return to foster care[; provided however, that the].

(c) The court shall not entertain a motion filed after [twenty-four months from] the [date of the first final discharge that occurred on or after the] former foster care youth's [eighteenth] twentieth birthday.

[(-a)] (d) A motion made pursuant to this [section] article by [a] the applicable official of the local social services [official] district, authorized agency or the office of children and family services shall be made by order to show cause. Such motion shall show by affidavit or other evidence that:

(1) the former foster care youth has no reasonable alternative to foster care;

(2) the former foster care youth consents to enrollment in and attendance at an appropriate educational or vocational program, unless evidence is submitted that such enrollment or attendance is unnecessary or inappropriate, given the particular circumstances of the youth;

(3) re-entry into foster care is in the best interests of the former foster care youth; [and]

(4) the former foster care youth consents to the re-entry into foster care; and

(5) in the case of a former foster youth discharged from foster care on or after attaining the age of sixteen, the youth is or is likely to be homeless unless returned to foster care.

[~~(b)~~] (e) A motion made pursuant to this [~~section~~] article by a former foster care youth shall be made by order to show cause ~~[or]~~ on ten days notice to the applicable official of the local social services district, authorized agency or the office of children and family services. Such motion shall show by affidavit or other evidence that:

(1) the requirements outlined in paragraphs one, two and three and, if applicable, paragraph five of subdivision [~~(a)~~] (d) of this section are met; and

(2) (i) the applicable official of the local social services district, authorized agency or the office of children and family services consents to the re-entry of such former foster care youth, or [~~if~~]

(ii) the applicable official of the local social services district, authorized agency or the office of children and family services refuses to consent to the re-entry of such former foster care youth and [~~that~~] such refusal is unreasonable.

[~~(c)~~] (f) (1) If at any time during the pendency of a proceeding brought pursuant to this [~~section~~] article, the court finds a compelling reason that it is in the best interests of the former foster care youth to be returned immediately to the custody of the applicable local commissioner of social services or [other officer, board or department authorized to receive children as public charges] official of the applicable authorized agency or the office of children and family services, pending a final decision on the motion, the court may issue a temporary order returning the youth to the custody of [~~the~~] such local commissioner of social services or other [~~officer, board or department authorized to receive children as public charges~~] official.

(2) Where the applicable official of the local social services district, authorized agency or the office of children and family services has refused to consent to the re-entry of a former foster care youth, and where it is alleged pursuant to subparagraph (ii) of paragraph two of subdivision [~~(b)~~] (e) of this section, that such refusal [~~by such social services district~~] is unreasonable, the court shall grant a motion made pursuant to subdivision [~~(b)~~] (e) of this section if the court finds and states in writing that the refusal [~~by the local social services district~~] is unreasonable. For purposes of this [~~section~~] article, a court shall find that a refusal [~~by a local social services district~~] to allow a former foster care youth to re-enter care is unreasonable if:

(i) the youth has no reasonable alternative to foster care;

(ii) the youth consents to enrollment in and attendance at an appropriate educational or vocational program, unless the court finds a compelling reason that such enrollment or attendance is unnecessary or inappropriate, given the particular circumstances of the youth; and

(iii) re-entry into foster care is in the best interests of the former foster care youth.

(3) Upon making a determination on a motion filed pursuant to this [~~section~~] article, where a motion has previously been granted pursuant to this [~~section~~] article, in addition to the applicable findings required by this [~~section~~] article, the court shall grant the motion to return a former foster care youth to the custody of the applicable local commissioner of social services or [other officer, board or department authorized to receive children as public charges] official of the applicable authorized agency or the office of children and family services, only:

(i) upon a finding that there is a compelling reason for such former foster care youth to return to care;

1 (ii) if the court has not previously granted a subsequent motion for
2 such former foster care youth to return to care pursuant to this para-
3 graph; and

4 (iii) upon consideration of the former foster care youth's compliance
5 with previous orders of the court, including the youth's previous
6 participation in an appropriate educational or vocational program, if
7 applicable.

8 § 5. This act shall take effect immediately.