

STATE OF NEW YORK

7941

2019-2020 Regular Sessions

IN ASSEMBLY

May 29, 2019

Introduced by M. of A. JAFFEE -- (at request of the Office of Court Administration) -- read once and referred 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 section 75 of part WW of chapter 59 of the laws of 2017, is
3 amended to read as 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 for acts
7 committed before the respondent's sixteenth birthday and in no event
8 past ~~[the child's]~~ his or her twenty-first birthday except as provided
9 for in subdivision four of section 353.5 of this part. A respondent who
10 has attained the age of eighteen but is less than twenty-one years of
11 age may move or, with his or her consent, may be the subject of a motion
12 to reenter foster care in accordance with the provisions of section one
13 thousand ninety-one of this act, provided that:

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

19 (ii) where the respondent had been previously placed or transferred
20 into placement with a local social services district pursuant to this
21 section or section 353.3 or 355.1 of this part, the motion may be made
22 by a social services official; or where the respondent had been previ-
23 ously placed with the state office of children and family services for a
24 non-secure or limited secure level of care pursuant to this section or

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

LBD10898-02-9

section 353.3 or 355.1 of this part where the placement was made in a county that does not have an approved "close to home" program, the motion may be made by an official of the state office of children and family services.

§ 2. Subdivision (g) of section 756-a of the family court act, as amended by section 4-a of part K of chapter 56 of the laws of 2019, is amended to read as follows:

(g) Successive extensions of placement under this section may be granted, only as authorized in this section, provided, however no placement may be made or continued beyond the child's eighteenth birthday without his or her consent and in no event past his or her twenty-first birthday. A child who was previously placed with a local social services district pursuant to section seven hundred fifty-six of this part and who was discharged from foster care on or after attaining the age of eighteen due to a failure to consent to continuation of placement or was 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 may move, or, with his or her consent, may be the subject of a motion by a social services official to reenter foster care in accordance with the provisions of section one thousand ninety-one of this act.

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

§ 1088. Continuing court jurisdiction. (a) If a child is placed pursuant to section three hundred fifty-eight-a, three hundred eighty-four, or three hundred eighty-four-a of the social services law, or pursuant to section one thousand seventeen, one thousand twenty-two, one thousand twenty-seven, one thousand fifty-two, one thousand eighty-nine, one thousand ninety-one, one thousand ninety-four or one thousand ninety-five of this act, or directly placed with a relative pursuant to section one thousand seventeen or one thousand fifty-five of this act; or if the child is freed for adoption pursuant to 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, the case shall remain on the court's calendar and the court shall maintain jurisdiction over the case until the child is discharged from placement and all orders regarding supervision, protection or services have expired.

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

(c) The court shall also maintain jurisdiction over a case for purposes of hearing a motion to permit 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~~], as defined in subdivision (a) of section one thousand ninety-one of this act, to return 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 child freed for adoption, the authorized agency into whose custody and guardianship the child has been placed.

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

§ 1091. Motion to return to foster care placement. (a) For purposes of this article, "former foster care youth" shall mean a youth who has attained the age of eighteen but is under the age of twenty-one and who 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 the office 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) (1) With respect to a former foster care youth discharged on or after his or her eighteenth birthday, 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 birthday.

(2) With respect to a former foster care youth discharged prior to his or her eighteenth birthday, the court shall not entertain a motion filed after his or her 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

1 evidence is submitted that such enrollment or attendance is unnecessary
2 or inappropriate, given the particular circumstances of the youth;

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

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

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

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

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

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

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

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

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

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

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

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

55 (3) Upon making a determination on a motion filed pursuant to this
56 ~~[section]~~ article, where a motion has previously been granted pursuant

1 to this [~~section~~] article, in addition to the applicable findings
2 required by this [~~section~~] article, the court shall grant the motion to
3 return a former foster care youth to the custody of the applicable local
4 commissioner of social services or [~~other officer, board or department~~
5 ~~authorized to receive children as public charges~~] official of the appli-
6 cable authorized agency or the office of children and family services,
7 only:

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

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

13 (iii) upon consideration of the former foster care youth's compliance
14 with previous orders of the court, including the youth's previous
15 participation in an appropriate educational or vocational program, if
16 applicable.

17 § 5. This act shall take effect immediately, provided, however, that
18 section two of this act shall take effect on the same date and in the
19 same manner as part K of chapter 56 of the laws of 2019, takes effect.