

S. 2233

A. 5462

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

February 13, 2009

IN SENATE -- Introduced by Sen. MONTGOMERY -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

IN ASSEMBLY -- Introduced by M. of A. AUBRY -- read once and referred to the Committee on Social Services

AN ACT to amend the social services law, in relation to the guardianship and custody of destitute or dependent children who have a parent or parents incarcerated or in a court ordered residential substance abuse treatment program

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

1 Section 1. Subparagraph (i) of paragraph (1) of subdivision 3 of  
2 section 384-b of the social services law, as amended by chapter 460 of  
3 the laws of 2006, is amended and a new subparagraph (v) is added to read  
4 as follows:

5 (i) Notwithstanding any other law to the contrary, whenever: the child  
6 shall have been in foster care for fifteen months of the most recent  
7 twenty-two months; or a court of competent jurisdiction has determined  
8 the child to be an abandoned child; or the parent has been convicted of  
9 a crime as set forth in subdivision eight of this section, the author-  
10 ized agency having care of the child shall file a petition pursuant to  
11 this section unless based on a case by case determination: (A) the  
12 child is being cared for by a relative or relatives; or (B) the agency  
13 has documented in the most recent case plan, a copy of which has been  
14 made available to the court, a compelling reason for determining that  
15 the filing of a petition would not be in the best interest of the child;  
16 or (C) the agency has not provided to the parent or parents of the child  
17 such services as it deems necessary for the safe return of the child to  
18 the parent or parents, unless such services are not legally required; OR  
19 (D) THE INCARCERATION OF THE PARENT OR PARENTS, OR THE PARTICIPATION OF

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

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1 THE PARENT OR PARENTS IN A RESIDENTIAL SUBSTANCE ABUSE TREATMENT  
2 PROGRAM, CONSTITUTES A SIGNIFICANT FACTOR IN THE CHILD'S PLACEMENT IN  
3 FOSTER CARE FOR A PERIOD OF FIFTEEN OF THE MOST RECENT TWENTY-TWO  
4 MONTHS, PROVIDED THAT THE AGENCY HAS NOT DOCUMENTED A REASON WHY IT  
5 WOULD OTHERWISE BE APPROPRIATE TO FILE A PETITION PURSUANT TO THIS  
6 SECTION.

7 (V) WHERE THE PARENT IS OR HAS BEEN INCARCERATED OR PARTICIPATING IN A  
8 RESIDENTIAL SUBSTANCE ABUSE TREATMENT PROGRAM, THE COURT SHALL CONSIDER  
9 WHETHER THE AUTHORIZED AGENCY FULFILLED ITS RESPONSIBILITY TO DEMON-  
10 STRATE DILIGENT EFFORTS, AS DEFINED IN PARAGRAPH (F) OF SUBDIVISION  
11 SEVEN OF THIS SECTION, UNLESS THE COURT HAS FOUND THAT SUCH EFFORTS ARE  
12 NOT REQUIRED AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION SEVEN OF THIS  
13 SECTION. THE COURT MAY MAKE AN ORDER DIRECTING THE AUTHORIZED AGENCY TO  
14 UNDERTAKE EFFORTS AND TO GATHER INPUT FROM INDIVIDUALS IN A REASONABLE  
15 POSITION TO AID IN ASSESSING WHETHER THE CONDITIONS SPECIFIED IN CLAUSE  
16 (D) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH EXIST, SUCH THAT THE AGENCY IS  
17 NOT REQUIRED TO FILE A PETITION FOR TERMINATION OF PARENTAL RIGHTS. SUCH  
18 INDIVIDUALS INCLUDE, BUT ARE NOT LIMITED TO, THE LAW GUARDIAN, CHILD,  
19 PARENT, FAMILY MEMBERS OR OTHER INDIVIDUALS OF IMPORTANCE IN THE CHILD'S  
20 LIFE, PARENT'S ATTORNEY, AND OTHER INDIVIDUALS PROVIDING SERVICES TO THE  
21 PARENT, INCLUDING CORRECTIONAL, MENTAL HEALTH AND SUBSTANCE ABUSE TREAT-  
22 MENT PROGRAM PERSONNEL.

23 S 2. Paragraph (a) of subdivision 7 of section 384-b of the social  
24 services law, as amended by section 57 of part A of chapter 3 of the  
25 laws of 2005, is amended to read as follows:

26 (a) For the purposes of this section, "permanently neglected child"  
27 shall mean a child who is in the care of an authorized agency and whose  
28 parent or custodian has failed for a period of either at least one year  
29 or fifteen out of the most recent twenty-two months following the date  
30 such child came into the care of an authorized agency substantially and  
31 continuously or repeatedly to maintain contact with or plan for the  
32 future of the child, although physically and financially able to do so,  
33 notwithstanding the agency's diligent efforts to encourage and strength-  
34 en the parental relationship when such efforts will not be detrimental  
35 to the best interests of the child. IN DETERMINING WHETHER A CHILD IS A  
36 "PERMANENTLY NEGLECTED CHILD" AS DEFINED IN THIS PARAGRAPH, THE COURT  
37 MAY CONSIDER THE SPECIAL CIRCUMSTANCES OF AN INCARCERATED PARENT OR  
38 PARENTS, OR OF A PARENT OR PARENTS PARTICIPATING IN A RESIDENTIAL  
39 SUBSTANCE ABUSE TREATMENT PROGRAM. THE COURT ALSO SHALL CONSIDER THE  
40 PARTICULAR CONSTRAINTS, INCLUDING BUT NOT LIMITED TO, LIMITATIONS PLACED  
41 ON FAMILY CONTACT AND THE UNAVAILABILITY OF SOCIAL OR REHABILITATIVE  
42 SERVICES TO AID IN THE DEVELOPMENT OF A MEANINGFUL RELATIONSHIP BETWEEN  
43 THE PARENT AND HIS OR HER CHILD, THAT MAY IMPACT THE PARENT'S ABILITY TO  
44 SUBSTANTIALLY AND CONTINUOUSLY OR REPEATEDLY MAINTAIN CONTACT WITH HIS  
45 OR HER CHILD AND TO PLAN FOR THE FUTURE OF HIS OR HER CHILD AS DEFINED  
46 IN PARAGRAPH (C) OF THIS SUBDIVISION. Where a court has previously  
47 determined in accordance with paragraph (b) of subdivision three of  
48 section three hundred fifty-eight-a of this chapter or section one thou-  
49 sand thirty-nine-b, subparagraph (A) of paragraph (i) of subdivision (b)  
50 of section one thousand fifty-two, paragraph (b) of subdivision two of  
51 section seven hundred fifty-four or paragraph (c) of subdivision two of  
52 section 352.2 of the family court act that reasonable efforts to make it  
53 possible for the child to return safely to his or her home are not  
54 required, the agency shall not be required to demonstrate diligent  
55 efforts as defined in this section. In the event that the parent  
56 defaults after due notice of a proceeding to determine such neglect,

1 such physical and financial ability of such parent may be presumed by  
2 the court.

3 S 3. Subparagraph (i) of paragraph (e) of subdivision 7 of section  
4 384-b of the social services law, as amended by chapter 911 of the laws  
5 of 1983, is amended to read as follows:

6 (i) The parent has failed for a period of six months to keep the agen-  
7 cy apprised of his or her location, PROVIDED THAT THE COURT MAY CONSIDER  
8 THE PARTICULAR DELAYS OR BARRIERS AN INCARCERATED PARENT OR PARENTS, OR  
9 A PARENT OR PARENTS PARTICIPATING IN A RESIDENTIAL SUBSTANCE ABUSE  
10 TREATMENT PROGRAM, MAY EXPERIENCE IN KEEPING THE AGENCY APPRISED OF HIS  
11 OR HER LOCATION; or

12 S 4. Subparagraphs 4 and 5 of paragraph (f) of subdivision 7 of  
13 section 384-b of the social services law, as amended by chapter 911 of  
14 the laws of 1983, are amended and a new subparagraph 6 is added to read  
15 as follows:

16 (4) informing the parents at appropriate intervals of the child's  
17 progress, development and health; [and]

18 (5) making suitable arrangements with a correctional facility and  
19 other appropriate persons for an incarcerated parent to visit the child  
20 within the correctional facility, if such visiting is in the best inter-  
21 ests of the child. When no visitation between child and incarcerated  
22 parent has been arranged for or permitted by the authorized agency  
23 because such visitation is determined not to be in the best interest of  
24 the child, then no permanent neglect proceeding under this subdivision  
25 shall be initiated on the basis of the lack of such visitation. Such  
26 arrangements shall include, but shall not be limited to, the transporta-  
27 tion of the child to the correctional facility, and providing or  
28 suggesting social or rehabilitative services to resolve or correct the  
29 problems other than incarceration itself which impair the incarcerated  
30 parent's ability to maintain contact with the child. When the parent is  
31 incarcerated in a correctional facility located outside the state, the  
32 provisions of this subparagraph shall be construed to require that an  
33 authorized agency make such arrangements with the correctional facility  
34 only if reasonably feasible and permissible in accordance with the laws  
35 and regulations applicable to such facility[.]; AND

36 (6) PROVIDING INFORMATION WHICH THE AUTHORIZED AGENCY SHALL OBTAIN  
37 FROM THE OFFICE OF CHILDREN AND FAMILY SERVICES, OUTLINING THE LEGAL  
38 RIGHTS AND OBLIGATIONS OF A PARENT WHO IS INCARCERATED OR IN A RESIDEN-  
39 TIAL SUBSTANCE ABUSE TREATMENT PROGRAM WHOSE CHILD IS IN CUSTODY OF AN  
40 AUTHORIZED AGENCY, AND ON SOCIAL OR REHABILITATIVE SERVICES AVAILABLE IN  
41 THE COMMUNITY, INCLUDING FAMILY VISITING SERVICES, TO AID IN THE DEVEL-  
42 OPMENT OF A MEANINGFUL RELATIONSHIP BETWEEN THE PARENT AND CHILD. WHER-  
43 EVER POSSIBLE, SUCH INFORMATION SHALL INCLUDE TRANSITIONAL AND FAMILY  
44 SUPPORT SERVICES LOCATED IN THE COMMUNITY TO WHICH AN INCARCERATED  
45 PARENT SHALL BE RELEASED.

46 S 5. The opening paragraph of subdivision 2 and subdivision 3 of  
47 section 409-e of the social services law, as amended by chapter 437 of  
48 the laws of 2006, are amended to read as follows:

49 Upon completion of any assessment provided for in subdivision one of  
50 this section, and not later than thirty days after placement of a child  
51 in foster care pursuant to article three or seven of the family court  
52 act or not later than thirty days after a child is removed from his or  
53 her home, the local social services district shall establish or update  
54 and maintain a family service plan based on the assessment required by  
55 subdivision one of this section. The plan shall be prepared in consulta-  
56 tion with the child's parent or guardian, unless such person is unavail-

1 able or unwilling to participate, or such participation would be harmful  
2 to the child, and with the child if the child is ten years of age or  
3 older, and, where appropriate, with the child's siblings. Such consulta-  
4 tion shall be done in person, OR WHERE THE PARENT IS INCARCERATED OR  
5 RESIDING IN A RESIDENTIAL SUBSTANCE ABUSE TREATMENT PROGRAM, SUCH  
6 CONSULTATION MAY ALSO BE DONE THROUGH THE USE OF TECHNOLOGY, INCLUDING  
7 BUT NOT LIMITED TO VIDEOCONFERENCE AND TELECONFERENCE TECHNOLOGY, unless  
8 such a meeting is impracticable or would be harmful to the child. IF  
9 THE PARENT IS INCARCERATED OR RESIDING IN A RESIDENTIAL DRUG TREATMENT  
10 FACILITY, THE PLAN SHALL REFLECT THE SPECIAL CIRCUMSTANCES AND NEEDS OF  
11 THE CHILD AND THE FAMILY. The plan shall include at least the following:

12 3. The plan shall be reviewed and revised, in accordance with the  
13 procedures and standards in subdivision two of this section, at least  
14 within the first ninety days following the date the child was first  
15 considered for placement in foster care, and, if the child has been  
16 placed in foster care pursuant to article three or seven of the family  
17 court act or removed from his or her home, within the first ninety days  
18 following the date of placement or removal. The plan shall be further  
19 reviewed and revised not later than one hundred twenty days from this  
20 initial review and at least every six months thereafter; provided,  
21 however, that if a sibling or half-sibling of the child has previously  
22 been considered for placement or removed from the home, the plan shall  
23 be further reviewed and revised on the schedule established for the  
24 family based on the earliest of those events. Such revisions shall indi-  
25 cate the types, dates and sources of services that have actually been  
26 provided and an evaluation of the efficacy of such services, and any  
27 necessary or desirable revisions in goals or planned services. The  
28 review and revision of the plan shall be prepared in consultation with  
29 the child's parent or guardian, unless such person is unavailable or  
30 unwilling to participate, or such participation would be harmful to the  
31 child, and with the child if the child is ten years of age or older,  
32 and, where appropriate, with the child's siblings. Such consultation  
33 shall be done in person, OR WHERE THE PARENT IS INCARCERATED OR RESIDING  
34 IN A RESIDENTIAL SUBSTANCE ABUSE TREATMENT PROGRAM, SUCH CONSULTATION  
35 MAY ALSO BE DONE THROUGH THE USE OF TECHNOLOGY, INCLUDING BUT NOT LIMIT-  
36 ED TO VIDEOCONFERENCE AND TELECONFERENCE TECHNOLOGY, unless such a meet-  
37 ing [is impracticable or] would be harmful to the child.

38 S 6. This act shall take effect immediately.