

S T A T E O F N E W Y O R K

S. 2233--A

A. 5462--A

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 Sens. MONTGOMERY, HASSELL-THOMPSON, KRUEGER, MONSERRATE -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- Introduced by M. of A. AUBRY, PERRY, CAMARA, ROSENTHAL -- read once and referred to the Committee on Social Services -- 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 guardianship and custody of destitute or dependent children who have a parent or parents incarcerated or in a 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

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

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1 the filing of a petition would not be in the best interest of the child;
2 or (C) the agency has not provided to the parent or parents of the child
3 such services as it deems necessary for the safe return of the child to
4 the parent or parents, unless such services are not legally required; OR
5 (D) THE PARENT OR PARENTS ARE INCARCERATED, OR PARTICIPATING IN A RESI-
6 DENTIAL SUBSTANCE ABUSE TREATMENT PROGRAM, OR THE PRIOR INCARCERATION OR
7 PARTICIPATION OF A PARENT OR PARENTS IN A RESIDENTIAL SUBSTANCE ABUSE
8 TREATMENT PROGRAM IS A SIGNIFICANT FACTOR IN WHY THE CHILD HAS BEEN IN
9 FOSTER CARE FOR FIFTEEN OF THE LAST TWENTY-TWO MONTHS, PROVIDED THAT THE
10 PARENT MAINTAINS A MEANINGFUL ROLE IN THE CHILD'S LIFE BASED ON THE
11 CRITERIA SET FORTH IN SUBPARAGRAPH (V) OF THIS PARAGRAPH AND THE AGENCY
12 HAS NOT DOCUMENTED A REASON WHY IT WOULD OTHERWISE BE APPROPRIATE TO
13 FILE A PETITION PURSUANT TO THIS SECTION.

14 (V) FOR THE PURPOSES OF CLAUSE (D) OF SUBPARAGRAPH (I) OF THIS PARA-
15 GRAPH, AN ASSESSMENT OF WHETHER A PARENT MAINTAINS A MEANINGFUL ROLE IN
16 HIS OR HER CHILD'S LIFE SHALL BE BASED ON EVIDENCE, WHICH MAY INCLUDE
17 THE FOLLOWING: A PARENT'S EXPRESSIONS OR ACTS MANIFESTING CONCERN FOR
18 THE CHILD, SUCH AS LETTERS, TELEPHONE CALLS, VISITS, AND OTHER FORMS OF
19 COMMUNICATION WITH THE CHILD; EFFORTS BY THE PARENT TO COMMUNICATE AND
20 WORK WITH THE AUTHORIZED AGENCY, LAW GUARDIAN, FOSTER PARENT, THE COURT,
21 AND THE PARENT'S ATTORNEY OR OTHER INDIVIDUALS PROVIDING SERVICES TO THE
22 PARENT, INCLUDING CORRECTIONAL, MENTAL HEALTH AND SUBSTANCE ABUSE TREAT-
23 MENT PROGRAM PERSONNEL FOR THE PURPOSE OF COMPLYING WITH THE SERVICE
24 PLAN AND REPAIRING, MAINTAINING OR BUILDING THE PARENT-CHILD RELATION-
25 SHIP; A POSITIVE RESPONSE BY THE PARENT TO THE AUTHORIZED AGENCY'S DILI-
26 GENT EFFORTS AS DEFINED IN PARAGRAPH (F) OF SUBDIVISION SEVEN OF THIS
27 SECTION; AND WHETHER THE CONTINUED INVOLVEMENT OF THE PARENT IN THE
28 CHILD'S LIFE IS IN THE CHILD'S BEST INTEREST. IN ASSESSING WHETHER A
29 PARENT MAINTAINS A MEANINGFUL ROLE IN HIS OR HER CHILD'S LIFE, THE
30 AUTHORIZED AGENCY SHALL GATHER INPUT FROM INDIVIDUALS AND AGENCIES IN A
31 REASONABLE POSITION TO HELP MAKE THIS ASSESSMENT, INCLUDING BUT NOT
32 LIMITED TO, THE AUTHORIZED AGENCY, LAW GUARDIAN, PARENT, CHILD, FOSTER
33 PARENT OR OTHER INDIVIDUALS OF IMPORTANCE IN THE CHILD'S LIFE, AND
34 PARENT'S ATTORNEY OR OTHER INDIVIDUALS PROVIDING SERVICES TO THE PARENT,
35 INCLUDING CORRECTIONAL, MENTAL HEALTH AND SUBSTANCE ABUSE TREATMENT
36 PROGRAM PERSONNEL. THE COURT MAY MAKE AN ORDER DIRECTING THE AUTHORIZED
37 AGENCY TO UNDERTAKE FURTHER STEPS TO AID IN COMPLETING ITS ASSESSMENT.

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

41 (a) For the purposes of this section, "permanently neglected child"
42 shall mean a child who is in the care of an authorized agency and whose
43 parent or custodian has failed for a period of either at least one year
44 or fifteen out of the most recent twenty-two months following the date
45 such child came into the care of an authorized agency substantially and
46 continuously or repeatedly to maintain contact with or plan for the
47 future of the child, although physically and financially able to do so,
48 notwithstanding the agency's diligent efforts to encourage and strength-
49 en the parental relationship when such efforts will not be detrimental
50 to the best interests of the child. THE COURT SHALL CONSIDER THE
51 SPECIAL CIRCUMSTANCES OF AN INCARCERATED PARENT OR PARENTS, OR OF A
52 PARENT OR PARENTS PARTICIPATING IN A RESIDENTIAL SUBSTANCE ABUSE TREAT-
53 MENT PROGRAM, WHEN DETERMINING WHETHER A CHILD IS A "PERMANENTLY
54 NEGLECTED CHILD" AS DEFINED IN THIS PARAGRAPH. IN SUCH CASES, THE COURT
55 ALSO SHALL CONSIDER THE PARTICULAR CONSTRAINTS, INCLUDING BUT NOT LIMIT-
56 ED TO, LIMITATIONS PLACED ON FAMILY CONTACT AND THE UNAVAILABILITY OF

1 SOCIAL OR REHABILITATIVE SERVICES TO AID IN THE DEVELOPMENT OF A MEAN-
2 INGFUL RELATIONSHIP BETWEEN THE PARENT AND HIS OR HER CHILD, THAT MAY
3 IMPACT THE PARENT'S ABILITY TO SUBSTANTIALLY AND CONTINUOUSLY OR REPEAT-
4 EDLY MAINTAIN CONTACT WITH HIS OR HER CHILD AND TO PLAN FOR THE FUTURE
5 OF HIS OR HER CHILD AS DEFINED IN PARAGRAPH (C) OF THIS SUBDIVISION.
6 Where a court has previously determined in accordance with paragraph (b)
7 of subdivision three of section three hundred fifty-eight-a of this
8 chapter or section one thousand thirty-nine-b, subparagraph (A) of para-
9 graph (i) of subdivision (b) of section one thousand fifty-two, para-
10 graph (b) of subdivision two of section seven hundred fifty-four or
11 paragraph (c) of subdivision two of section 352.2 of the family court
12 act that reasonable efforts to make it possible for the child to return
13 safely to his or her home are not required, the agency shall not be
14 required to demonstrate diligent efforts as defined in this section. In
15 the event that the parent defaults after due notice of a proceeding to
16 determine such neglect, such physical and financial ability of such
17 parent may be presumed by the court.

18 S 3. Subparagraph (i) of paragraph (e) of subdivision 7 of section
19 384-b of the social services law, as amended by chapter 911 of the laws
20 of 1983, is amended to read as follows:

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

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

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

33 (5) making suitable arrangements with a correctional facility and
34 other appropriate persons for an incarcerated parent to visit the child
35 within the correctional facility, if such visiting is in the best inter-
36 ests of the child. When no visitation between child and incarcerated
37 parent has been arranged for or permitted by the authorized agency
38 because such visitation is determined not to be in the best interest of
39 the child, then no permanent neglect proceeding under this subdivision
40 shall be initiated on the basis of the lack of such visitation. Such
41 arrangements shall include, but shall not be limited to, the transporta-
42 tion of the child to the correctional facility, and providing or
43 suggesting social or rehabilitative services to resolve or correct the
44 problems other than incarceration itself which impair the incarcerated
45 parent's ability to maintain contact with the child. When the parent is
46 incarcerated in a correctional facility located outside the state, the
47 provisions of this subparagraph shall be construed to require that an
48 authorized agency make such arrangements with the correctional facility
49 only if reasonably feasible and permissible in accordance with the laws
50 and regulations applicable to such facility[.]; AND

51 (6) PROVIDING INFORMATION WHICH THE AUTHORIZED AGENCY SHALL OBTAIN
52 FROM THE OFFICE OF CHILDREN AND FAMILY SERVICES, OUTLINING THE LEGAL
53 RIGHTS AND OBLIGATIONS OF A PARENT WHO IS INCARCERATED OR IN A RESIDEN-
54 TIAL SUBSTANCE ABUSE TREATMENT PROGRAM WHOSE CHILD IS IN CUSTODY OF AN
55 AUTHORIZED AGENCY, AND ON SOCIAL OR REHABILITATIVE SERVICES AVAILABLE IN
56 THE COMMUNITY, INCLUDING FAMILY VISITING SERVICES, TO AID IN THE DEVEL-

OPMENT OF A MEANINGFUL RELATIONSHIP BETWEEN THE PARENT AND CHILD. WHEREVER POSSIBLE, SUCH INFORMATION SHALL INCLUDE TRANSITIONAL AND FAMILY SUPPORT SERVICES LOCATED IN THE COMMUNITY TO WHICH AN INCARCERATED PARENT OR PARENT PARTICIPATING IN A RESIDENTIAL SUBSTANCE ABUSE TREATMENT PROGRAM SHALL RETURN.

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

Upon completion of any assessment provided for in subdivision one of this section, and not later than thirty days after placement of a child in foster care pursuant to article three or seven of the family court act or not later than thirty days after a child is removed from his or her home, the local social services district shall establish or update and maintain a family service plan based on the assessment required by subdivision one of this section. The plan shall be prepared in consultation with the child's parent or guardian, unless such person is unavailable or unwilling to participate, or such participation would be harmful to the child, and with the child if the child is ten years of age or older, and, where appropriate, with the child's siblings. Such consultation shall be done in person, unless such a meeting is impracticable or would be harmful to the child. IF IT IS IMPRACTICABLE TO HOLD SUCH CONSULTATION IN PERSON, SUCH CONSULTATION MAY BE DONE THROUGH THE USE OF TECHNOLOGY, INCLUDING BUT NOT LIMITED TO, VIDEOCONFERENCING AND TELECONFERENCE TECHNOLOGY. IF THE PARENT IS INCARCERATED OR RESIDING IN A RESIDENTIAL DRUG TREATMENT FACILITY, THE PLAN SHALL REFLECT THE SPECIAL CIRCUMSTANCES AND NEEDS OF THE CHILD AND THE FAMILY. The plan shall include at least the following:

3. The plan shall be reviewed and revised, in accordance with the procedures and standards in subdivision two of this section, at least within the first ninety days following the date the child was first considered for placement in foster care, and, if the child has been placed in foster care pursuant to article three or seven of the family court act or removed from his or her home, within the first ninety days following the date of placement or removal. The plan shall be further reviewed and revised not later than one hundred twenty days from this initial review and at least every six months thereafter; provided, however, that if a sibling or half-sibling of the child has previously been considered for placement or removed from the home, the plan shall be further reviewed and revised on the schedule established for the family based on the earliest of those events. Such revisions shall indicate the types, dates and sources of services that have actually been provided and an evaluation of the efficacy of such services, and any necessary or desirable revisions in goals or planned services. The review and revision of the plan shall be prepared in consultation with the child's parent or guardian, unless such person is unavailable or unwilling to participate, or such participation would be harmful to the child, and with the child if the child is ten years of age or older, and, where appropriate, with the child's siblings. Such consultation shall be done in person, unless such a meeting is impracticable or would be harmful to the child. IF IT IS IMPRACTICABLE TO HOLD SUCH CONSULTATION IN PERSON, SUCH CONSULTATION MAY BE DONE THROUGH THE USE OF TECHNOLOGY, INCLUDING BUT NOT LIMITED TO, VIDEOCONFERENCING AND TELECONFERENCE TECHNOLOGY.

S 6. This act shall take effect immediately.