

1278

2009-2010 Regular Sessions

I N S E N A T E

January 28, 2009

Introduced by Sens. MONTGOMERY, DIAZ, ONORATO -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

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 to read as follows:
4 (i) Notwithstanding any other law to the contrary, whenever: the child
5 shall have been in foster care for fifteen months of the most recent
6 twenty-two months; or a court of competent jurisdiction has determined
7 the child to be an abandoned child; or the parent has been convicted of
8 a crime as set forth in subdivision eight of this section, the author-
9 ized agency having care of the child shall file a petition pursuant to
10 this section unless based on a case by case determination: (A) the
11 child is being cared for by a relative or relatives; or (B) the agency
12 has documented in the most recent case plan, a copy of which has been
13 made available to the court, a compelling reason for determining that
14 the filing of a petition would not be in the best interest of the child;
15 or (C) the agency has not provided to the parent or parents of the child
16 such services as it deems necessary for the safe return of the child to
17 the parent or parents, unless such services are not legally required; OR
18 (D) THE INCARCERATION OF THE PARENT OR PARENTS, OR THE COURT ORDERED
19 PARTICIPATION OF THE PARENT OR PARENTS IN A RESIDENTIAL SUBSTANCE ABUSE
20 TREATMENT PROGRAM CONSTITUTES A SIGNIFICANT FACTOR IN THE CHILD'S PLACE-
21 MENT IN FOSTER CARE FOR A PERIOD OF FIFTEEN OF THE MOST RECENT
22 TWENTY-TWO MONTHS, PROVIDED THAT THE AGENCY HAS NOT DOCUMENTED A REASON

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

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1 WHY IT WOULD OTHERWISE BE APPROPRIATE TO FILE A PETITION PURSUANT TO
2 THIS SECTION.

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

6 (a) For the purposes of this section, "permanently neglected child"
7 shall mean a child who is in the care of an authorized agency and whose
8 parent or custodian has failed for a period of either at least one year
9 or fifteen out of the most recent twenty-two months following the date
10 such child came into the care of an authorized agency substantially and
11 continuously or repeatedly to maintain contact with or plan for the
12 future of the child, although physically and financially able to do so,
13 notwithstanding the agency's diligent efforts to encourage and strength-
14 en the parental relationship when such efforts will not be detrimental
15 to the best interests of the child. IN DETERMINING WHETHER A CHILD IS A
16 "PERMANENTLY NEGLECTED CHILD" AS DEFINED IN THIS PARAGRAPH, THE COURT
17 MAY CONSIDER THE SPECIAL CIRCUMSTANCES OF AN INCARCERATED PARENT OR
18 PARENTS, OR PARENT OR PARENTS COURT-ORDERED TO A RESIDENTIAL SUBSTANCE
19 ABUSE TREATMENT PROGRAM, INCLUDING, BUT NOT LIMITED TO, THE PARTICULAR
20 CONSTRAINTS SURROUNDING THE PARENT'S ABILITY TO SUBSTANTIALLY AND
21 CONTINUOUSLY OR REPEATEDLY MAINTAIN CONTACT WITH HIS OR HER CHILD AND TO
22 PLAN FOR THE FUTURE OF THE CHILD AS DEFINED IN PARAGRAPH (C) OF THIS
23 SUBDIVISION. Where a court has previously determined in accordance with
24 paragraph (b) of subdivision three of section three hundred
25 fifty-eight-a of this chapter or section one thousand thirty-nine-b,
26 subparagraph (A) of paragraph (i) of subdivision (b) of section one
27 thousand fifty-two, paragraph (b) of subdivision two of section seven
28 hundred fifty-four or paragraph (c) of subdivision two of section 352.2
29 of the family court act that reasonable efforts to make it possible for
30 the child to return safely to his or her home are not required, the
31 agency shall not be required to demonstrate diligent efforts as defined
32 in this section. In the event that the parent defaults after due notice
33 of a proceeding to determine such neglect, such physical and financial
34 ability of such parent may be presumed by the court.

35 S 3. Subparagraph (i) of paragraph (e) of subdivision 7 of section
36 384-b of the social services law, as amended by chapter 911 of the laws
37 of 1983, is amended to read as follows:

38 (i) The parent has failed for a period of six months to keep the agen-
39 cy apprised of his or her location, PROVIDED THAT THE COURT MAY CONSIDER
40 THE PARTICULAR DELAYS OR BARRIERS AN INCARCERATED PARENT OR PARENTS, OR
41 A PARENT OR PARENTS COURT-ORDERED TO A RESIDENTIAL SUBSTANCE ABUSE
42 TREATMENT PROGRAM MAY EXPERIENCE IN KEEPING THE AGENCY APPRISED OF HIS
43 OR HER LOCATION; or

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

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

50 (5) making suitable arrangements with a correctional facility and
51 other appropriate persons for an incarcerated parent to visit the child
52 within the correctional facility, if such visiting is in the best inter-
53 ests of the child. When no visitation between child and incarcerated
54 parent has been arranged for or permitted by the authorized agency
55 because such visitation is determined not to be in the best interest of
56 the child, then no permanent neglect proceeding under this subdivision

1 shall be initiated on the basis of the lack of such visitation. Such
2 arrangements shall include, but shall not be limited to, the transporta-
3 tion of the child to the correctional facility, and providing or
4 suggesting social or rehabilitative services to resolve or correct the
5 problems other than incarceration itself which impair the incarcerated
6 parent's ability to maintain contact with the child. When the parent is
7 incarcerated in a correctional facility located outside the state, the
8 provisions of this subparagraph shall be construed to require that an
9 authorized agency make such arrangements with the correctional facility
10 only if reasonably feasible and permissible in accordance with the laws
11 and regulations applicable to such facility[.]; AND

12 (6) PROVIDING INFORMATION TO AN INCARCERATED PARENT ABOUT AND REFER-
13 RALS TO SOCIAL OR REHABILITATIVE SERVICES AVAILABLE WITHIN THE CORREC-
14 TIONAL FACILITY AND WITHIN THE COMMUNITY AFTER RELEASE TO AID IN THE
15 DEVELOPMENT OF A MEANINGFUL RELATIONSHIP BETWEEN THE PARENT AND CHILD.

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

19 Upon completion of any assessment provided for in subdivision one of
20 this section, and not later than thirty days after placement of a child
21 in foster care pursuant to article three or seven of the family court
22 act or not later than thirty days after a child is removed from his or
23 her home, the local social services district shall establish or update
24 and maintain a family service plan based on the assessment required by
25 subdivision one of this section. The plan shall be prepared in consulta-
26 tion with the child's parent or guardian, unless such person is unavail-
27 able or unwilling to participate, or such participation would be harmful
28 to the child, and with the child if the child is ten years of age or
29 older, and, where appropriate, with the child's siblings. Such consulta-
30 tion shall be done in person, OR WHERE THE PARENT IS INCARCERATED OR
31 RESIDING IN A COURT-ORDERED RESIDENTIAL SUBSTANCE ABUSE TREATMENT
32 PROGRAM, SUCH CONSULTATION MAY ALSO BE DONE THROUGH VIDEOCONFERENCE OR
33 TELECONFERENCE TECHNOLOGY, unless such a meeting is impracticable or
34 would be harmful to the child. IF THE PARENT IS INCARCERATED OR RESID-
35 ING IN A COURT-ORDERED RESIDENTIAL DRUG TREATMENT FACILITY, THE PLAN
36 SHALL REFLECT THE SPECIAL CIRCUMSTANCES AND NEEDS OF THE CHILD AND THE
37 FAMILY. The plan shall include at least the following:

38 3. The plan shall be reviewed and revised, in accordance with the
39 procedures and standards in subdivision two of this section, at least
40 within the first ninety days following the date the child was first
41 considered for placement in foster care, and, if the child has been
42 placed in foster care pursuant to article three or seven of the family
43 court act or removed from his or her home, within the first ninety days
44 following the date of placement or removal. The plan shall be further
45 reviewed and revised not later than one hundred twenty days from this
46 initial review and at least every six months thereafter; provided,
47 however, that if a sibling or half-sibling of the child has previously
48 been considered for placement or removed from the home, the plan shall
49 be further reviewed and revised on the schedule established for the
50 family based on the earliest of those events. Such revisions shall indi-
51 cate the types, dates and sources of services that have actually been
52 provided and an evaluation of the efficacy of such services, and any
53 necessary or desirable revisions in goals or planned services. The
54 review and revision of the plan shall be prepared in consultation with
55 the child's parent or guardian, unless such person is unavailable or
56 unwilling to participate, or such participation would be harmful to the

1 child, and with the child if the child is ten years of age or older,
2 and, where appropriate, with the child's siblings. Such consultation
3 shall be done in person, OR WHERE THE PARENT IS INCARCERATED OR RESIDING
4 IN A COURT-ORDERED RESIDENTIAL SUBSTANCE ABUSE TREATMENT PROGRAM, SUCH
5 CONSULTATION MAY ALSO BE DONE THROUGH VIDEOCONFERENCE OR TELECONFERENCE
6 TECHNOLOGY, unless such a meeting is impracticable or would be harmful
7 to the child.

8 S 6. This act shall take effect immediately.