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

3867

2009-2010 Regular Sessions

I N S E N A T E

April 2, 2009

Introduced by Sen. MONTGOMERY -- (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, the surrogate's court procedure act and the social services law, in relation to implementation of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 with respect to subsidized kinship guardianship, educational stability, transition plans and sibling visitation and contact

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

Section 1. Section 661 of the family court act is amended by adding a new subdivision (c) to read as follows:

(C) SUBSIDIZED KINSHIP GUARDIANSHIP OF A CHILD. WHERE THE PERMANENCY GOAL FOR A CHILD WHO IS THE SUBJECT OF A PROCEEDING PURSUANT TO ARTICLE TEN OR TEN-A OF THIS ACT IS REFERRAL FOR SUBSIDIZED LEGAL GUARDIANSHIP WITH A FIT AND WILLING RELATIVE, A PETITION UNDER THIS ARTICLE FILED BY SUCH RELATIVE SHALL BE FILED WITH THE COURT BEFORE WHOM THE MOST RECENT PROCEEDING PURSUANT TO ARTICLE TEN OR TEN-A OF THIS ACT IS PENDING. THE COURT PRESIDING OVER THE PROCEEDING PURSUANT TO ARTICLE TEN OR TEN-A MAY CONSOLIDATE THE HEARING OF A GUARDIANSHIP PETITION FILED BY SUCH RELATIVE WITH THE DISPOSITIONAL HEARING PURSUANT TO ARTICLE TEN OR PERMANENCY HEARING PURSUANT TO ARTICLE TEN-A, AS APPLICABLE. THE COURT MUST MAKE AND SET FORTH IN ITS ORDER APPOINTING THE GUARDIAN THE FINDINGS ENUMERATED IN SECTION ONE THOUSAND FIFTY-FIVE-C OR ONE THOUSAND EIGHTY-NINE-B OF THIS ACT, AS APPLICABLE. SUCH AN ORDER OF SUBSIDIZED GUARDIANSHIP MAY ONLY BE ISSUED UPON THE CONSENT OF THE PROSPECTIVE RELATIVE GUARDIAN, THE ATTORNEY FOR THE CHILD, THE LOCAL DEPARTMENT OF SOCIAL SERVICES AND, IN THE CASE OF A YOUTH EIGHTEEN YEARS OF AGE OR OLDER, THE YOUTH TO THE ISSUANCE OF AN ORDER OF SUBSIDIZED KINSHIP GUARDIANSHIP. YOUTH FOURTEEN YEARS OF AGE OR OLDER MUST BE CONSULTED REGARDING THE GUARDIANSHIP. AN ORDER OF SUBSIDIZED KINSHIP GUARDIANSHIP MAY ONLY BE ISSUED ONCE THE

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

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LOCAL DEPARTMENT OF SOCIAL SERVICES AND THE PROSPECTIVE RELATIVE GUARDIAN HAVE ENTERED INTO A WRITTEN, BINDING KINSHIP GUARDIANSHIP ASSISTANCE AGREEMENT, A COPY OF WHICH HAS BEEN PROVIDED BY THE LOCAL DEPARTMENT OF SOCIAL SERVICES TO THE PROSPECTIVE RELATIVE GUARDIAN. THE COURT SHALL PROVIDE IN ITS ORDER APPOINTING A SUBSIDIZED KINSHIP GUARDIAN THAT THE LOCAL DEPARTMENT OF SOCIAL SERVICES AND THE ATTORNEY FOR THE CHILD MUST RECEIVE NOTICE OF AND BE MADE PARTIES TO ANY SUBSEQUENT PROCEEDING TO VACATE OR MODIFY THE ORDER OF GUARDIANSHIP.

S 2. Subdivision (a) and subparagraph (A) of paragraph (i) of subdivision (b) of section 1052 of the family court act, subdivision (a) as amended by chapter 519 of the laws of 2008, subparagraph (A) of paragraph (i) of subdivision (b) as amended by chapter 7 of the laws of 1999, the opening paragraph and clause 7 as amended by section 7 of part B of chapter 327 of the laws of 2007 and the closing paragraph as amended by chapter 671 of the laws of 2005, are amended to read as follows:

(a) At the conclusion of a dispositional hearing under this article, the court shall enter an order of disposition directing one or more of the following:

(i) suspending judgment in accord with section one thousand fifty-three of this part; or

(ii) releasing the child to the custody of his parents or other person legally responsible in accord with section one thousand fifty-four of this part; or

(iii) placing the child in accord with section one thousand fifty-five of this part; or

(iv) making an order of protection in accord with section one thousand fifty-six of this part; or

(v) placing the respondent under supervision in accord with section one thousand fifty-seven of this part; or

(vi) granting custody of the child to relatives or suitable persons pursuant to section one thousand fifty-five-b of this part; OR

(VII) GRANTING SUBSIDIZED GUARDIANSHIP TO A FIT AND WILLING RELATIVE PURSUANT TO SECTION ONE THOUSAND FIFTY-FIVE-C OF THIS PART.

However, the court shall not enter an order of disposition combining placement of the child under paragraph (iii) of this subdivision with a disposition under paragraph (i) or (ii) of this subdivision. An order granting custody of the child pursuant to paragraph (vi) OR SUBSIDIZED GUARDIANSHIP OF A CHILD PURSUANT TO PARAGRAPH (VII) of this subdivision shall not be combined with any other disposition under this subdivision.

(A) whether continuation in the child's home would be contrary to the best interests of the child and where appropriate, that reasonable efforts were made prior to the date of the dispositional hearing held pursuant to this article to prevent or eliminate the need for removal of the child from his or her home and if the child was removed from the home prior to the date of such hearing, that such removal was in the child's best interests and, where appropriate, reasonable efforts were made to make it possible for the child to safely return home. If the court determines that reasonable efforts to prevent or eliminate the need for removal of the child from the home were not made but that the lack of such efforts was appropriate under the circumstances, the court order shall include such a finding, or if the permanency plan for the child is adoption, guardianship or another permanent living arrangement other than reunification with the parent or parents of the child, the court order shall include a finding that reasonable efforts, including

consideration of appropriate in-state and out-of-state placements, are being made to make and finalize such alternate permanent placement.

For the purpose of this section, reasonable efforts to prevent or eliminate the need for removing the child from the home of the child or to make it possible for the child to return safely to the home of the child shall not be required where, upon motion with notice by the social services official, the court determines that:

(1) the parent of such child has subjected the child to aggravated circumstances, as defined in subdivision (j) of section one thousand twelve of this article;

(2) the parent of such child has been convicted of (i) murder in the first degree as defined in section 125.27 or murder in the second degree as defined in section 125.25 of the penal law and the victim was another child of the parent; or (ii) manslaughter in the first degree as defined in section 125.20 or manslaughter in the second degree as defined in section 125.15 of the penal law and the victim was another child of the parent, provided, however, that the parent must have acted voluntarily in committing such crime;

(3) the parent of such child has been convicted of an attempt to commit any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent; or has been convicted of criminal solicitation as defined in article one hundred, conspiracy as defined in article one hundred five or criminal facilitation as defined in article one hundred fifteen of the penal law for conspiring, soliciting or facilitating any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent;

(4) the parent of such child has been convicted of assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10 or aggravated assault upon a person less than eleven years old as defined in section 120.12 of the penal law, and the commission of one of the foregoing crimes resulted in serious physical injury to the child or another child of the parent;

(5) the parent of such child has been convicted in any other jurisdiction of an offense which includes all of the essential elements of any crime specified in clause two, three or four of this subparagraph, and the victim of such offense was the child or another child of the parent; or

(6) the parental rights of the parent to a sibling of such child have been involuntarily terminated;

[unless the court determines that providing reasonable efforts would be in the best interests of the child, not contrary to the health and safety of the child, and would likely result in the reunification of the parent and the child in the foreseeable future. The court shall state such findings in its order.]

(7) If the court determines that reasonable efforts are not to be required because of one of the grounds set forth above, a permanency hearing shall be held within thirty days of the finding of the court that such efforts are not required. At the permanency hearing, the court shall determine the appropriateness of the permanency plan prepared by the social services official which shall include whether or when the child: (i) will be returned to the parent; (ii) should be placed for adoption with the social services official filing a petition for termination of parental rights; (iii) should be referred for legal guardianship WHICH MAY INCLUDE SUBSIDIZED KINSHIP GUARDIANSHIP; (iv) should be placed permanently with a fit and willing relative; or (v) should be placed in another planned permanent living arrangement that includes a

significant connection to an adult who is willing to be a permanency resource for the child, if the social services official has documented to the court a compelling reason for determining that it would not be in the best interest of the child to return home, be referred for termination of parental rights and placed for adoption, placed with a fit and willing relative, or placed with a legal guardian. The social services official shall thereafter make reasonable efforts to place the child in a timely manner, including consideration of appropriate in-state and out-of-state placements, and to complete whatever steps are necessary to finalize the permanent placement of the child as set forth in the permanency plan approved by the court. If reasonable efforts are determined by the court not to be required because of one of the grounds set forth in this paragraph, the social services official may file a petition for termination of parental rights in accordance with section three hundred eighty-four-b of the social services law.

IF THE COURT FINDS THAT ONE OF THE GROUNDS SET FORTH IN THIS PARAGRAPH EXIST, THE COURT SHALL FIND THAT REASONABLE EFFORTS ARE NOT REQUIRED UNLESS THE COURT DETERMINES THAT PROVIDING REASONABLE EFFORTS WOULD BE IN THE BEST INTERESTS OF THE CHILD, WOULD NOT BE CONTRARY TO THE HEALTH AND SAFETY OF THE CHILD AND WOULD LIKELY RESULT IN THE REUNIFICATION OF THE PARENT AND CHILD IN THE FORESEEABLE FUTURE. THE COURT SHALL STATE SUCH FINDINGS IN ITS ORDER.

For the purpose of this section, in determining reasonable effort to be made with respect to a child, and in making such reasonable efforts, the child's health and safety shall be the paramount concern.

For the purpose of this section, a sibling shall include a half-sibling;

S 3. The family court act is amended by adding a new section 1055-c to read as follows:

S 1055-C. SUBSIDIZED GUARDIANSHIP WITH A FIT AND WILLING RELATIVE. (A) AT THE CONCLUSION OF A DISPOSITIONAL HEARING PURSUANT TO THIS ARTICLE, WHERE THE PERMANENCY PLAN IS SUBSIDIZED GUARDIANSHIP WITH A FIT AND WILLING RELATIVE, THE COURT MAY ISSUE AN ORDER OF SUBSIDIZED GUARDIANSHIP IN RESPONSE TO A PETITION FILED WITH THE COURT BY A RELATIVE PURSUANT TO ARTICLE SIX OF THIS ACT OR ARTICLE SEVENTEEN OF THE SURROGATE'S COURT PROCEDURE ACT. IF THE COURT GRANTS THE GUARDIANSHIP PETITION, IT SHALL TERMINATE JURISDICTION OVER THE CHILD PROTECTIVE PROCEEDING AND TERMINATE ANY PENDING ORDERS PURSUANT TO THIS ARTICLE OTHER THAN ASSIGNMENT OF COUNSEL. THE COURT MAY GRANT THE GUARDIANSHIP PETITION ONLY IF THE COURT MAKES THE FOLLOWING FINDINGS AND SETS FORTH THE FINDINGS IN ITS ORDER:

(I) THAT GRANTING SUBSIDIZED GUARDIANSHIP OF THE CHILD TO THE RELATIVE IS IN THE BEST INTERESTS OF THE CHILD AND THAT NEITHER A PERMANENCY GOAL OF RETURN TO THE CHILD'S BIRTH PARENTS NOR ADOPTION WOULD BE IN THE CHILD'S BEST INTERESTS AND ARE THEREFORE NOT APPROPRIATE PERMANENCY GOALS FOR THE CHILD;

(II) THAT THE TERMINATION OF ORDERS ISSUED PURSUANT TO THIS ARTICLE WILL NOT JEOPARDIZE THE SAFETY OF THE CHILD; AND THAT GRANTING SUBSIDIZED GUARDIANSHIP OF THE CHILD TO THE RELATIVE WILL PROVIDE THE CHILD WITH A SAFE AND PERMANENT HOME;

(III) THAT THE CHILD DEMONSTRATES A STRONG ATTACHMENT TO THE RELATIVE AND THE RELATIVE DEMONSTRATES A STRONG COMMITMENT TO CARING PERMANENTLY FOR THE CHILD;

(IV) THAT THE RELATIVE HAS BEEN APPROVED OR CERTIFIED AS A FOSTER PARENT PURSUANT TO REGULATIONS OF THE OFFICE OF CHILDREN AND FAMILY

SERVICES AND HAS BEEN SCREENED IN ACCORDANCE WITH SECTION THREE HUNDRED SEVENTY-EIGHT-A OF THE SOCIAL SERVICES LAW;

(V) THAT THE CHILD HAS BEEN IN FOSTER CARE FOR A PERIOD OF NOT LESS THAN FOURTEEN MONTHS AND HAS BEEN IN FOSTER CARE IN THE CARE OF THE PROPOSED GUARDIAN FOR A PERIOD OF NOT LESS THAN SIX CONSECUTIVE MONTHS PRECEDING THE FILING OF THE GUARDIANSHIP PETITION;

(VI) THAT THE RELATIVE, THE ATTORNEY FOR THE CHILD AND THE LOCAL DEPARTMENT OF SOCIAL SERVICES CONSENT TO THE ISSUANCE OF AN ORDER OF SUBSIDIZED GUARDIANSHIP PURSUANT TO ARTICLE SIX OF THIS ACT OR ARTICLE SEVENTEEN OF THE SURROGATE'S COURT PROCEDURE ACT AND THE TERMINATION OF ANY ORDERS ISSUED PURSUANT TO THIS ARTICLE;

(VII) THAT THE LOCAL DEPARTMENT OF SOCIAL SERVICES AND THE PROSPECTIVE RELATIVE GUARDIAN HAVE ENTERED INTO A WRITTEN BINDING KINSHIP GUARDIANSHIP ASSISTANCE AGREEMENT, A COPY OF WHICH HAS BEEN PROVIDED BY THE LOCAL DEPARTMENT OF SOCIAL SERVICES TO THE PROSPECTIVE RELATIVE GUARDIAN; AND

(VIII) THAT IF THE YOUTH IS FOURTEEN YEARS OF AGE OR OLDER, HE OR SHE HAS INDICATED HIS OR HER POSITION REGARDING THE PROPOSED GUARDIANSHIP EITHER IN PERSON OR THROUGH HIS OR HER ATTORNEY AND IF THE YOUTH IS EIGHTEEN YEARS OF AGE OR OLDER, HE OR SHE HAS CONSENTED TO THE GUARDIANSHIP.

(B) AS PART OF THE ORDER GRANTING SUBSIDIZED GUARDIANSHIP TO THE RELATIVE PURSUANT TO ARTICLE SIX OF THIS ACT OR ARTICLE SEVENTEEN OF THE SURROGATE'S COURT PROCEDURE ACT, THE COURT SHALL REQUIRE THAT THE LOCAL DEPARTMENT OF SOCIAL SERVICES AND THE ATTORNEY FOR THE CHILD RECEIVE NOTICE OF AND BE MADE PARTIES TO ANY SUBSEQUENT PROCEEDING TO VACATE OR MODIFY THE ORDER OF SUBSIDIZED GUARDIANSHIP.

(C) AN ORDER ENTERED PURSUANT TO THIS SECTION SHALL RESULT IN THE TERMINATION OF ANY ORDERS IN EFFECT PURSUANT TO THIS ARTICLE AND SHALL CONCLUDE THE COURT'S JURISDICTION OVER THE PROCEEDING PURSUANT TO THIS ARTICLE.

S 4. Subdivision (c) of section 1089 of the family court act, as added by section 27 of part A of chapter 3 of the laws of 2005, subparagraphs (ii) and (iii) of paragraph 4 as amended by section 9 and subparagraph (viii) of paragraph 5 as amended by section 10 of part B of chapter 327 of the laws of 2007, is amended to read as follows:

(c) Content of the permanency hearing report. The permanency hearing report shall include, but need not be limited to, up-to-date and accurate information regarding:

(1) the child's current permanency goal, which may be:

(i) return to the parent or parents;

(ii) placement for adoption with the local social services official filing a petition for termination of parental rights;

(iii) referral for legal guardianship, WHICH MAY INCLUDE SUBSIDIZED KINSHIP GUARDIANSHIP;

(iv) permanent placement with a fit and willing relative; or

(v) placement in another planned permanent living arrangement that includes a significant connection to an adult who is willing to be a permanency resource for the child, including documentation of the compelling reason for determining that it would not be in the best interests of the child to be returned home, placed for adoption, placed with a legal guardian, or placed with a fit and willing relative;

(2) the health, well-being, and status of the child since the last hearing including:

(i) a description of the child's health and well-being;

(ii) information regarding the child's current placement;

(iii) an update on the educational and other progress the child has made since the last hearing including a description of the steps that have been taken by the local social services district or agency to ENSURE EDUCATIONAL STABILITY FOR THE CHILD AND TO enable prompt delivery of appropriate educational and vocational services to the child, including, but not [be] limited to:

(A) where the child is subject to article sixty-five of the education law or elects to participate in an educational program leading to a high school diploma, the steps that the local social services district or agency has taken to promptly enable the child to be enrolled or to continue enrollment in an appropriate school or educational program leading to a high school diploma;

(B) where the child is eligible to be enrolled in a pre-kindergarten program pursuant to section thirty-six hundred two-e of the education law, the steps that the local social services district or agency has taken to promptly enable the child to be enrolled in an appropriate pre-kindergarten program, if available;

(C) where the child is under three years of age and is involved in an indicated case of child abuse or neglect, or where the local social services district suspects that the child may have a disability as defined in subdivision five of section twenty-five hundred forty-one of the public health law or if the child has been found eligible to receive early intervention or special educational services prior to or during the foster care placement, in accordance with title two-A of article twenty-five of the public health law or article eighty-nine of the education law, the steps that the local social services district or agency has taken to make any necessary referrals of the child for early intervention, pre-school special educational or special educational evaluations or services, as appropriate, and any available information regarding any evaluations and services which are being provided or are scheduled to be provided in accordance with applicable law; and

(D) where the child is at least sixteen and not subject to article sixty-five of the education law and elects not to participate in an educational program leading to a high school diploma, the steps that the local social services district has taken to assist the child to become gainfully employed or enrolled in a vocational program;

(iv) a description of the visitation plan or plans describing the persons with whom the child visits, including any siblings, and the frequency, duration and quality of the visits;

(v) where a child has attained the age of fourteen, a description of the services and assistance that are being provided to enable the child to learn independent living skills; [and]

(vi) WHERE THE PERMANENCY GOAL FOR A CHILD AGING OUT OF FOSTER CARE IS ANOTHER PLANNED PERMANENT LIVING ARRANGEMENT THAT INCLUDES A SIGNIFICANT CONNECTION TO AN ADULT WILLING TO BE A PERMANENCY RESOURCE FOR THE CHILD AND IT IS ANTICIPATED THAT THE CHILD'S DISCHARGE OR TRIAL DISCHARGE MAY OCCUR WITHIN THE EARLIER OF THE NEXT SCHEDULED PERMANENCY HEARING OR ONE YEAR, A DESCRIPTION OF THE TRANSITION PLAN FOR THE YOUTH AND THE PROGRESS MADE IN DEVELOPING AND IMPLEMENTING THE TRANSITION PLAN; AND

(VII) a description of any other services being provided to the child;

(3) the status of the parent, including:

(i) the services that have been offered to the parent to enable the child to safely return home;

(ii) the steps the parent has taken to use the services;

(iii) any barriers encountered to the delivery of such services;

(iv) the progress the parent has made toward reunification; and

(v) a description of any other steps the parent has taken to comply with and achieve the permanency [plan] GOAL, if applicable[.];

(4) a description of the reasonable efforts to achieve the child's permanency [plan] GOAL that have been taken by the local social services district or agency since the last hearing. The description shall include:

(i) unless the child is freed for adoption or there has been a determination by a court that such efforts are not required pursuant to section one thousand thirty-nine-b of this act, the reasonable efforts that have been made by the local social services district or agency to eliminate the need for placement of the child and to enable the child to safely return home, including a description of any services that have been provided;

(ii) where the permanency [plan] GOAL is adoption, guardianship (INCLUDING SUBSIDIZED KINSHIP GUARDIANSHIP), placement with a fit and willing relative or another planned permanent living arrangement other than return to parent, the reasonable efforts that have been made by the local social services district or agency to make and finalize such alternate permanent placement, including a description of any services that have been provided and a description of the consideration of appropriate in-state and out-of-state placements;

(iii) where return home of the child is not likely, the reasonable efforts that have been made by the local social services district or agency to evaluate and plan for another permanent plan, including consideration of appropriate in-state and out-of-state placements, and any steps taken to further a permanent plan other than return to the child's parent; or

(iv) where a child has been freed for adoption, a description of the reasonable efforts that will be taken to facilitate the adoption of the child; and

(5) the recommended permanency [plan] GOAL including:

(i) a recommendation regarding whether the child's current permanency goal should be continued or modified, the reasons therefor, and the anticipated date for meeting the goal;

(ii) a recommendation regarding whether the child's placement should be extended and the reasons for the recommendation;

(iii) any proposed changes in the child's current placement, trial discharge or discharge that may occur before the next permanency hearing;

(iv) a description of the steps that will be taken by the local social services district or agency to PROVIDE FOR EDUCATIONAL STABILITY FOR THE CHILD AND TO continue to enable prompt delivery of appropriate educational and vocational services to the child in his or her current placement and during any potential change in the child's foster care placement, during any trial discharge, and after discharge of the child in accordance with the plans for the child's placement until the next permanency hearing;

(v) whether any modification to the visitation plan or plans is recommended and the reasons therefor, INCLUDING ANY PLANS FOR VISITS AND/OR CONTACTS WITH SIBLINGS;

(vi) where a child has attained the age of fourteen or will attain the age of fourteen before the next permanency hearing, a description of the services and assistance that will be provided to enable the child to learn independent living skills;

(vii) WHAT STEPS, IF ANY, WILL BE TAKEN FOR THE DEVELOPMENT AND IMPLEMENTATION OF A TRANSITION PLAN FOR ANY CHILD WHOSE PERMANENCY GOAL IS

ANOTHER PLANNED PERMANENT LIVING ARRANGEMENT THAT INCLUDES A SIGNIFICANT CONNECTION TO AN ADULT WILLING TO BE A PERMANENCY RESOURCE FOR THE CHILD AND WHEN DISCHARGE OR TRIAL DISCHARGE TO SUCH ARRANGEMENT IS ANTICIPATED TO TAKE PLACE;

(VIII) where a child has been placed outside this state, whether the out-of-state placement continues to be appropriate, necessary and in the best interests of the child;

[(viii)] (IX) where return home of the child is not likely, the efforts that will be made to evaluate or plan for another permanent plan, including consideration of appropriate in-state and out-of-state placements; and

[(ix)] (X) in the case of a child who has been freed for adoption:

(A) a description of services and assistance that will be provided to the child and the prospective adoptive parent to expedite the adoption of the child;

(B) information regarding the child's eligibility for adoption subsidy pursuant to title nine of article six of the social services law; and

(C) if the child is over age fourteen and has voluntarily withheld his or her consent to an adoption, the facts and circumstances regarding the child's decision to withhold consent and the reasons therefor.

S 5. Subparagraphs (i), (iii), (v) and (vii) of paragraph 2 of subdivision (d) of section 1089 of the family court act, as added by section 27 of part A of chapter 3 of the laws of 2005, clause (B) of subparagraph (iii) as amended by section 12 of part B of chapter 327 of the laws of 2007, are amended to read as follows:

(i) whether the permanency goal for the child should be approved or modified and the anticipated date for achieving the goal. The permanency goal may be determined to be:

(A) return to parent;

(B) placement for adoption with the local social services official filing a petition for termination of parental rights;

(C) referral for legal guardianship, WHICH MAY INCLUDE SUBSIDIZED KINSHIP GUARDIANSHIP;

(D) permanent placement with a fit and willing relative; or

(E) placement in another planned permanent living arrangement that includes a significant connection to an adult willing to be a permanency resource for the child if the local social services official has documented to the court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights and placed for adoption, placed with a fit and willing relative, or placed with a legal guardian;

(iii) determining whether reasonable efforts have been made to effectuate the child's permanency [plan] GOAL as follows:

(A) unless the child is freed for adoption or there has been a determination by a court that such efforts are not required pursuant to section one thousand thirty-nine-b of this act, whether reasonable efforts have been made to eliminate the need for placement of the child and to enable the child to safely return home;

(B) where the permanency [plan] GOAL is adoption, guardianship, placement with a fit and willing relative or another planned permanent living arrangement other than return to parent, whether reasonable efforts have been made to make and finalize such alternate permanent placement, including consideration of appropriate in-state and out-of-state placements;

(v) the steps that must be taken by the local social services official or agency to implement the educational and vocational program components

of the permanency hearing report submitted pursuant to subdivision (c) of this section, INCLUDING STEPS TO ENSURE EDUCATIONAL STABILITY FOR THE CHILD and any modifications that should be made to such plan;

(vii) where placement of the child is extended, such order shall also include:

(A) a description of the visitation plan or plans, INCLUDING ANY PLANS FOR VISITS AND/OR CONTACT WITH THE CHILD'S SIBLINGS;

(B) where the child is not freed for adoption, a direction that the child's parent or parents, including any non-respondent parent or other person legally responsible for the child's care shall be notified of the planning conference or conferences to be held pursuant to subdivision three of section four hundred nine-e of the social services law and notification of their right to attend such conference or conferences and their right to have counsel or another representative with them;

(C) where the child is not freed for adoption, a direction that the parent or other person legally responsible for the child's care keep the local social services district or agency apprised of his or her current whereabouts and a current mailing address;

(D) where the child is not freed for adoption, a notice that if the child remains in foster care for fifteen of the most recent twenty-two months, the local social services district or agency may be required by law to file a petition to terminate parental rights;

(E) where a child has been freed for adoption and is over age fourteen and has voluntarily withheld his or her consent to an adoption, the facts and circumstances with regard to the child's decision to withhold consent and the reasons therefor;

(F) where a child has been placed outside of this state, whether the out-of-state placement continues to be appropriate, necessary and in the best interests of the child;

(G) where a child has or will before the next permanency hearing reach the age of fourteen, the services and assistance necessary to assist the child in learning independent living skills;

(H) WHERE THE PERMANENCY GOAL FOR A CHILD AGING OUT OF FOSTER CARE IS ANOTHER PLANNED PERMANENT LIVING ARRANGEMENT THAT INCLUDES A SIGNIFICANT CONNECTION TO AN ADULT WILLING TO BE A PERMANENCY RESOURCE FOR THE CHILD AND IT IS ANTICIPATED THAT THE CHILD'S DISCHARGE OR TRIAL DISCHARGE MAY OCCUR WITHIN THE EARLIER OF THE NEXT SCHEDULED PERMANENCY HEARING OR ONE YEAR, THE LOCAL SOCIAL SERVICES DISTRICT OR AGENCY SHALL BE DIRECTED TO COMMENCE DEVELOPMENT OF A TRANSITION PLAN FOR THE CHILD, IN CONSULTATION WITH THE CHILD AND HIS OR HER ATTORNEY, AND SHALL FILE THE FINAL TRANSITION PLAN WITH THE COURT AND PROVIDE COPIES FOR THE CHILD, HIS OR HER ATTORNEY AND ALL PARTIES NO LATER THAN NINETY DAYS BEFORE THE CHILD'S ANTICIPATED DISCHARGE FROM FOSTER CARE; and

S 6. The family court act is amended by adding a new section 1089-b to read as follows:

S 1089-B. SUBSIDIZED GUARDIANSHIP WITH A FIT AND WILLING RELATIVE. (A) WHERE THE PERMANENCY GOAL IS SUBSIDIZED LEGAL GUARDIANSHIP WITH A FIT AND WILLING RELATIVE, THE COURT MAY ISSUE AN ORDER OF SUBSIDIZED GUARDIANSHIP IN RESPONSE TO A PETITION FILED BEFORE THE COURT BY A RELATIVE PURSUANT TO ARTICLE SIX OF THIS ACT OR ARTICLE SEVENTEEN OF THE SURROGATE'S COURT PROCEDURE ACT. THE COURT MAY CONSOLIDATE THE HEARING OF THE PETITION WITH A PERMANENCY HEARING HELD PURSUANT TO THIS ARTICLE. IF THE COURT GRANTS THE GUARDIANSHIP PETITION, THE COURT SHALL TERMINATE ITS JURISDICTION PURSUANT TO THIS ARTICLE AND SHALL TERMINATE ALL PENDING ORDERS ISSUED PURSUANT TO THIS ARTICLE OTHER THAN APPOINTMENT OF COUN-

SEL. THE COURT MAY ONLY GRANT THE GUARDIANSHIP PETITION IF IT MAKES THE FOLLOWING FINDINGS AND SETS FORTH THE FINDINGS IN ITS ORDER:

(I) THAT GRANTING SUBSIDIZED GUARDIANSHIP OF THE CHILD TO THE RELATIVE IS IN THE BEST INTERESTS OF THE CHILD AND THAT NEITHER A PERMANENCY GOAL OF RETURN TO THE CHILD'S BIRTH PARENTS NOR ADOPTION WOULD BE IN THE CHILD'S BEST INTERESTS AND THEREFORE WOULD NOT BE APPROPRIATE PERMANENCY GOALS FOR THE CHILD;

(II) THAT THE TERMINATION OF THE ORDER PLACING THE CHILD PURSUANT TO THIS ARTICLE OR ARTICLE TEN OF THIS ACT WILL NOT JEOPARDIZE THE SAFETY OF THE CHILD; AND THAT GRANTING SUBSIDIZED GUARDIANSHIP OF THE CHILD TO THE RELATIVE WILL PROVIDE THE CHILD WITH A SAFE AND PERMANENT HOME;

(III) THAT THE CHILD DEMONSTRATES A STRONG ATTACHMENT TO THE RELATIVE AND THE RELATIVE DEMONSTRATES A STRONG COMMITMENT TO CARING PERMANENTLY FOR THE CHILD;

(IV) THAT THE RELATIVE HAS BEEN APPROVED OR CERTIFIED AS A FOSTER PARENT PURSUANT TO REGULATIONS OF THE OFFICE OF CHILDREN AND FAMILY SERVICES AND HAS BEEN SCREENED IN ACCORDANCE WITH SECTION THREE HUNDRED SEVENTY-EIGHT-A OF THE SOCIAL SERVICES LAW;

(V) THAT THE CHILD HAS BEEN IN FOSTER CARE FOR A PERIOD OF NOT LESS THAN FOURTEEN MONTHS AND HAS BEEN IN FOSTER CARE IN THE CARE OF THE PROPOSED GUARDIAN FOR A PERIOD OF NOT LESS THAN SIX CONSECUTIVE MONTHS PRECEDING THE FILING OF THE GUARDIANSHIP PETITION;

(VI) THAT THE RELATIVE, THE ATTORNEY FOR THE CHILD AND THE LOCAL DEPARTMENT OF SOCIAL SERVICES CONSENT TO THE ISSUANCE OF AN ORDER OF SUBSIDIZED GUARDIANSHIP PURSUANT TO ARTICLE SIX OF THIS ACT OR ARTICLE SEVENTEEN OF THE SURROGATE'S COURT PROCEDURE ACT AND THE TERMINATION OF THE ORDER OF PLACEMENT PURSUANT TO THIS ARTICLE OR ARTICLE TEN OF THIS ACT;

(VII) THAT THE LOCAL DEPARTMENT OF SOCIAL SERVICES AND THE PROSPECTIVE RELATIVE GUARDIAN HAVE ENTERED INTO A WRITTEN, BINDING KINSHIP GUARDIANSHIP ASSISTANCE AGREEMENT, A COPY OF WHICH HAS BEEN PROVIDED BY THE LOCAL DEPARTMENT OF SOCIAL SERVICES TO THE PROSPECTIVE RELATIVE GUARDIAN; AND

(VIII) THAT IF THE YOUTH IS FOURTEEN YEARS OF AGE OR OLDER, HE OR SHE HAS INDICATED HIS OR HER POSITION REGARDING THE PROPOSED GUARDIANSHIP EITHER IN PERSON OR THROUGH HIS OR HER ATTORNEY AND IF THE YOUTH IS EIGHTEEN YEARS OF AGE OR OLDER, HE OR SHE HAS CONSENTED TO THE GUARDIANSHIP.

(B) AS PART OF THE ORDER GRANTING SUBSIDIZED GUARDIANSHIP TO THE RELATIVE PURSUANT TO ARTICLE SIX OF THIS ACT OR ARTICLE SEVENTEEN OF THE SURROGATE'S COURT PROCEDURE ACT THE COURT SHALL REQUIRE THAT THE LOCAL DEPARTMENT OF SOCIAL SERVICES AND THE ATTORNEY FOR THE CHILD RECEIVE NOTICE OF AND BE MADE PARTIES TO ANY SUBSEQUENT PROCEEDING TO MODIFY THE ORDER OF GUARDIANSHIP GRANTED PURSUANT TO THE GUARDIANSHIP PROCEEDING.

(C) AN ORDER ENTERED PURSUANT TO THIS SECTION SHALL RESULT IN THE TERMINATION OF ANY ORDERS IN EFFECT PURSUANT TO THIS ARTICLE AND SHALL CONCLUDE THE COURT'S JURISDICTION OVER THE PROCEEDING PURSUANT TO THIS ARTICLE OR ARTICLE TEN OF THIS ACT.

S 7. Section 1701 of the surrogate's court procedure act, as amended by chapter 404 of the laws of 2008, is amended to read as follows:

S 1701. Power of court

The court has power over the property of an infant and is authorized and empowered to appoint a guardian of the person or of the property or of both of an infant whether or not the parent or parents of the infant or child are living. Where the guardianship and custody of a child have been committed to an authorized agency pursuant to section six hundred

thirty-one of the family court act, or section three hundred eighty-three-c, section three hundred eighty-four or section three hundred eighty-four-b of the social services law, or where both parents of the child whose consent to the adoption of the child would have been required pursuant to section one hundred eleven-a of the domestic relations law are dead, the court may appoint a permanent guardian of a child if the court finds that such appointment is in the best interests of the child. WHERE THE COURT HAS MADE FINDINGS PURSUANT TO SECTION ONE THOUSAND FIFTY-FIVE-C OR ONE THOUSAND EIGHTY-NINE-B OF THE FAMILY COURT ACT, THE FAMILY COURT MAY APPOINT A FIT AND WILLING RELATIVE TO BE A SUBSIDIZED KINSHIP GUARDIAN OF THE CHILD.

S 8. Section 1702 of the surrogate's court procedure act is amended by adding a new subdivision 3 to read as follows:

3. THE PETITION FOR APPOINTMENT OF A RELATIVE AS A SUBSIDIZED KINSHIP GUARDIAN OF THE CHILD SHALL BE FILED WITH THE COURT WHERE THE MOST RECENT CHILD PROTECTIVE PROCEEDING OR PERMANENCY HEARING IS PENDING.

S 9. Subdivision 8 of section 1704 of the surrogate's court procedure act, as added by chapter 404 of the laws of 2008, is amended to read as follows:

8. In addition, the petition for appointment of a permanent guardian OR SUBSIDIZED KINSHIP GUARDIAN of an infant or child shall include:

(a) an assessment to be performed by the local social services district, which shall contain:

(i) the full name and address of the person seeking to become the guardian;

(ii) the ability of the guardian to assume permanent care of the child;

(iii) the child's property and assets, if known;

(iv) the wishes of the child, if [appropriate] THE CHILD IS FOURTEEN YEARS OF AGE OR OLDER AND HIS OR HER CONSENT IF HE OR SHE IS EIGHTEEN YEARS OF AGE OR OLDER;

(v) the results of the criminal history record check with the division of criminal justice services of the guardian and any person eighteen years of age or older residing in the guardian's household conducted by the office of children and family services pursuant to subdivision two of section three hundred seventy-eight-a of the social services law if such a criminal history record check has been completed;

(vi) the results of a search of the statewide central register of child abuse and maltreatment records regarding the guardian and any person eighteen years of age or older residing in the guardian's household, including whether such person has been the subject of an indicated report conducted pursuant to subparagraph (e) of paragraph (A) of subdivision four of section four hundred twenty-two of the social services law, if such a search has been conducted; and

(vii) the results of all inspections and assessments of the guardian's home and the child's progress while placed in the home, if any;

(b) IN PROCEEDINGS FOR THE APPOINTMENT OF A PERMANENT GUARDIAN OR SUBSIDIZED KINSHIP GUARDIAN OF A CHILD FREED FOR ADOPTION, a certified copy of the order or orders terminating the parental rights of the child's parents or approving the surrender of the child or, IN PROCEEDINGS FOR APPOINTMENT OF A PERMANENT GUARDIAN WHERE THE CHILD'S PARENTS ARE DECEASED, the death certificates of the child's parents, as applicable;

(c) the recommendation of the authorized agency involved, if any; [and]

(d) the suitability, ability and commitment of the permanent OR SUBSIDIZED KINSHIP guardian to assume full legal responsibility for the child and raise the child to adulthood AND THE DEGREE OF ATTACHMENT OF THE CHILD TO THE PROPOSED RELATIVE GUARDIAN; AND

(E) IN PROCEEDINGS FOR THE APPOINTMENT OF A SUBSIDIZED KINSHIP GUARDIAN:

(I) THE REASONS THAT GRANTING SUBSIDIZED GUARDIANSHIP OF THE CHILD TO THE RELATIVE IS IN THE BEST INTERESTS OF THE CHILD AND THAT NEITHER A PERMANENCY GOAL OF RETURN TO THE CHILD'S BIRTH PARENTS NOR ADOPTION WOULD BE IN THE CHILD'S BEST INTEREST AND WOULD, THEREFORE, NOT BE APPROPRIATE PERMANENCY GOALS FOR THE CHILD;

(II) THE REASONS THAT THE TERMINATION OF THE ORDER PLACING THE CHILD PURSUANT TO ARTICLE TEN OR TEN-A OF THE FAMILY COURT ACT WILL NOT JEOPARDIZE THE SAFETY OF THE CHILD; AND THAT GRANTING SUBSIDIZED GUARDIANSHIP OF THE CHILD TO THE PROSPECTIVE RELATIVE GUARDIAN WILL PROVIDE THE CHILD WITH A SAFE AND PERMANENT HOME;

(III) THE LENGTH OF TIME THAT THE RELATIVE HAS BEEN APPROVED OR CERTIFIED AS A FOSTER PARENT, THE LENGTH OF TIME THE PROSPECTIVE RELATIVE GUARDIAN HAS PROVIDED FOSTER CARE FOR THE CHILD AND THE LENGTH OF TIME THE CHILD HAS BEEN IN FOSTER CARE PRIOR TO THE FILING OF THE GUARDIANSHIP PETITION;

(IV) THE CONSENT OF THE PROSPECTIVE RELATIVE GUARDIAN, THE ATTORNEY FOR THE CHILD AND THE LOCAL DEPARTMENT OF SOCIAL SERVICES TO THE ISSUANCE OF AN ORDER OF SUBSIDIZED KINSHIP GUARDIANSHIP; AND

(V) A COPY OF THE WRITTEN, BINDING KINSHIP GUARDIANSHIP ASSISTANCE AGREEMENT ENTERED INTO BY THE LOCAL DEPARTMENT OF SOCIAL SERVICES AND THE PROSPECTIVE RELATIVE GUARDIAN.

S 10. Subdivision 1 of section 1705 of the surrogate's court procedure act is amended by adding a new paragraph (d) to read as follows:

(D) IN PROCEEDINGS FOR THE APPOINTMENT OF A PERMANENT OR SUBSIDIZED KINSHIP GUARDIAN, THE ATTORNEY FOR THE CHILD AND THE LOCAL DEPARTMENT OF SOCIAL SERVICES.

S 11. Subdivision 1 of section 1706 of the surrogate's court procedure act, as amended by chapter 404 of the laws of 2008, is amended to read as follows:

1. Where process is not issued or upon the return of process, the court shall ascertain the age of the infant, the amount of his or her personal property, the gross amount of the rents and profits of his or her real estate during his or her minority and the sufficiency of the security offered by the proposed guardian. With respect to applications for appointment as a permanent OR SUBSIDIZED KINSHIP guardian of a child, the permanent guardian shall have the right and responsibility to make decisions, including issuing any necessary consents, regarding the child's protection, education, care and control, health and medical needs, and the physical custody of the person of the child[, and]. A PERMANENT GUARDIAN may consent to the adoption of the child. Provided, however, that nothing in this subdivision shall be construed to limit the ability of a child to consent to his or her own medical care as may be otherwise provided by law. If the [infant] YOUTH is over the age of fourteen years the court shall ascertain his or her preference for a suitable guardian. Notwithstanding any other section of law, where the [infant] YOUTH is over the age of eighteen, [the infant] HE OR SHE shall consent to the appointment of a suitable guardian.

S 12. Section 1707 of the surrogate's court procedure act, as amended by chapter 404 of the laws of 2008, is amended to read as follows:

S 1707. Decree appointing guardian; term of office

1. If the court [be] IS satisfied that the interests of the infant will be promoted by the appointment of a guardian or by the issuance of temporary letters of guardianship of his or her person or of his or her property, or of both, it must make a decree accordingly. If the court determines that appointment of a permanent guardian is in the best interests of the infant or child, the court shall issue a decree appointing such guardian. IF THE COURT MAKES THE FINDINGS REQUIRED BY SECTION ONE THOUSAND FIFTY-FIVE-C OR ONE THOUSAND EIGHTY-NINE-B OF THE FAMILY COURT ACT, THE COURT SHALL ISSUE A DECREE APPOINTING THE RELATIVE AS A SUBSIDIZED KINSHIP GUARDIAN. The same person may be appointed guardian of both the person and the property of the infant or the guardianship of the person and of the property may be committed to different persons. The court may appoint a person other than the parent of the infant or the person nominated by the petitioner. When the court is informed that the infant, a person nominated to be a guardian of such infant, the petitioner, or any individual eighteen years of age or over who resides in the home of the proposed guardian is a subject of or another person named in an indicated report, as such terms are defined in section four hundred twelve of the social services law, filed with the statewide register of child abuse and maltreatment pursuant to title six of article six of the social services law or is or has been the subject of or the respondent in or a party to a child protective proceeding commenced under article ten of the family court act which resulted in an order finding that the child is an abused or neglected child the court shall obtain such records regarding such report or proceeding as it deems appropriate and shall give the information contained therein due consideration in its determination.

2. The term of office of a guardian of the person or property so appointed expires when the [infant] CHILD attains majority, unless the [infant] CHILD consents to the continuation of or appointment of a guardian after his or her eighteenth birthday, in which case such term of office expires on his or her twenty-first birthday, or after such other shorter period as the court establishes upon good cause shown; except that the term of office of a guardian of the person of [an infant] A CHILD expires upon the [infant's] CHILD'S marriage prior to attaining majority. The appointment of a permanent guardian OR SUBSIDIZED KINSHIP GUARDIAN of a child shall expire when the [infant or] child reaches the age of eighteen years, unless the [infant or] child consents to the continuation of a guardian after his or her eighteenth birthday, in which case such term of office expires on his or her twenty-first birthday, or unless vacated by the court prior to the [infant or] child's eighteenth or twenty-first birthday if the court finds that based upon clear and convincing evidence the guardian failed to or is unable, unavailable or unwilling to provide proper care and custody of the infant or child, or that the guardianship is no longer in the best interests of the infant or child. THE COURT SHALL PROVIDE IN ITS ORDER APPOINTING A SUBSIDIZED KINSHIP GUARDIAN THAT THE LOCAL DEPARTMENT OF SOCIAL SERVICES AND THE ATTORNEY FOR THE CHILD MUST RECEIVE NOTICE OF AND BE MADE PARTIES TO ANY SUBSEQUENT PROCEEDING TO VACATE OR MODIFY THE ORDER OF GUARDIANSHIP.

S 13. Subdivisions 5 and 6 of section 409-e of the social services law are renumbered subdivisions 6 and 7 and a new subdivision 5 is added to read as follows:

5. WITH RESPECT TO EACH CHILD WITH A PERMANENCY PLAN OF PLACEMENT WITH A PROSPECTIVE RELATIVE GUARDIAN AND RECEIPT OF KINSHIP GUARDIAN ASSIST-

ANCE PAYMENTS, THE FAMILY SERVICE PLAN MUST INCLUDE THE FOLLOWING SPECIFIC INFORMATION:

(A) HOW THE CHILD MEETS THE ELIGIBILITY REQUIREMENTS;

(B) THE STEPS THE AGENCY HAS TAKEN TO DETERMINE THAT RETURN TO THE HOME OR ADOPTION IS NOT APPROPRIATE;

(C) THE EFFORTS THE AGENCY HAS MADE TO DISCUSS ADOPTION WITH THE CHILD'S RELATIVE FOSTER PARENT AND THE REASONS WHY ADOPTION IS NOT AN OPTION;

(D) THE EFFORTS THE AGENCY HAS MADE TO DISCUSS KINSHIP GUARDIANSHIP WITH THE CHILD'S BIRTH PARENT OR PARENTS OR THE REASONS WHY EFFORTS WERE NOT MADE;

(E) THE REASON WHY A PERMANENT PLACEMENT WITH A PROSPECTIVE RELATIVE GUARDIAN AND RECEIPT OF A KINSHIP GUARDIAN ASSISTANCE PAYMENT IS IN THE CHILD'S BEST INTERESTS;

(F) THE EFFORTS MADE BY THE AGENCY TO DISCUSS WITH THE CHILD'S BIRTH PARENT OR PARENTS THE KINSHIP GUARDIANSHIP ASSISTANCE ARRANGEMENTS OR WHY EFFORTS WERE NOT MADE; AND

(G) THE REASONS WHY THE CHILD IS SEPARATED FROM HIS OR HER SIBLINGS, IF THE CHILD'S SIBLINGS ARE NOT ALSO IN FOSTER CARE WITH THE PROSPECTIVE RELATIVE GUARDIAN.

S 14. This act shall take effect on the ninetieth day after it shall have become a law.