

4388

2009-2010 Regular Sessions

I N   S E N A T E

April 22, 2009

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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 and the social services law, in relation to trial discharges of youth in foster care and voluntary re-placements of older adolescents in foster care

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

1     Section 1. Subparagraph (E) of paragraph (i) of subdivision (b) and  
2     subdivision (e) of section 1055 of the family court act, paragraph (i)  
3     of subdivision (b) as amended and subdivision (e) as relettered by chap-  
4     ter 437 of the laws of 2006 and subdivision (e) as amended by section 18  
5     of part A of chapter 3 of the laws of 2005, are amended to read as  
6     follows:  
7     (E) where the permanency goal is return to the parent and it is antic-  
8     ipated that the child may be finally discharged to his or her parent  
9     before the next scheduled permanency hearing, the court may provide the  
10    local social services district with authority to finally discharge the  
11    child to the parent without further court hearing, provided that ten  
12    days prior written notice is served upon the court and [law guardian]  
13    THE ATTORNEY FOR THE CHILD. If the court on its own motion or the [law  
14    guardian] ATTORNEY FOR THE CHILD on motion to the court does not request  
15    the matter to be brought for review before final discharge, no further  
16    permanency hearings will be required. The local social services  
17    district may also discharge the child on a trial basis to the parent  
18    unless the court has prohibited such trial discharge or unless the court  
19    has conditioned such trial discharge on another event. For the purposes  
20    of this section, trial discharge shall mean that the child is physically  
21    returned to the parent while the child remains in the care and custody  
22    of the local social services district. Permanency hearings shall  
23    continue to be held for any child who has returned to his or her parents

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

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1 on a trial discharge. Where the permanency goal for a [child] YOUTH  
2 aging out of foster care is another planned permanent living arrangement  
3 that includes a significant connection to an adult willing to be a  
4 permanency resource for the [child] YOUTH, the local social services  
5 district may also discharge the [child] YOUTH on a trial basis to the  
6 planned permanent living arrangements, unless the court has prohibited  
7 or otherwise conditioned such a trial discharge. Trial discharge for a  
8 [child] YOUTH aging out of foster care shall mean that a [child] YOUTH  
9 is physically discharged but the local social services district retains  
10 care and custody or custody and guardianship of the [child] YOUTH and  
11 there remains a date certain for the scheduled permanency hearing.  
12 TRIAL DISCHARGE FOR A YOUTH AGING OUT OF FOSTER CARE MAY BE EXTENDED AT  
13 EACH SCHEDULED PERMANENCY HEARING, UNTIL THE CHILD REACHES THE AGE OF  
14 TWENTY-ONE, IF A CHILD OVER THE AGE OF EIGHTEEN CONSENTS TO SUCH EXTEN-  
15 SION. PRIOR TO FINALLY DISCHARGING A YOUTH AGING OUT OF FOSTER CARE TO  
16 ANOTHER PLANNED PERMANENT LIVING ARRANGEMENT, THE LOCAL SOCIAL SERVICES  
17 OFFICIAL SHALL GIVE THE YOUTH NOTICE OF THE RIGHT TO APPLY TO REENTER  
18 FOSTER CARE WITHIN THE EARLIER OF TWENTY-FOUR MONTHS OF THE FINAL  
19 DISCHARGE OR THE YOUTH'S TWENTY-FIRST BIRTHDAY IN ACCORDANCE WITH ARTI-  
20 CLE TEN-B OF THIS ACT. SUCH NOTICE SHALL ALSO ADVISE THE YOUTH THAT  
21 REENTRY INTO FOSTER CARE WILL ONLY BE AVAILABLE WHERE THE FORMER FOSTER  
22 CARE YOUTH HAS NO REASONABLE ALTERNATIVE TO FOSTER CARE AND CONSENTS TO  
23 ENROLLMENT IN AND ATTENDANCE AT AN APPROPRIATE EDUCATIONAL OR VOCATIONAL  
24 PROGRAM IN ACCORDANCE WITH PARAGRAPH TWO OF SUBDIVISION (A) OF SECTION  
25 ONE THOUSAND NINETY-ONE OF THIS ACT. Children placed under this section  
26 shall be placed until the court completes the initial permanency hearing  
27 scheduled pursuant to article ten-A of this act. Should the court deter-  
28 mine pursuant to article ten-A of this act that placement shall be  
29 extended beyond completion of the scheduled permanency hearing, such  
30 extended placement and any such successive extensions of placement shall  
31 expire at the completion of the next scheduled permanency hearing,  
32 unless the court shall determine, pursuant to article ten-A of this act,  
33 to continue to extend such placement.

34 (e) No placement may be made or continued under this section beyond  
35 the child's eighteenth birthday without his or her consent and in no  
36 event past his or her twenty-first birthday. HOWEVER, A FORMER FOSTER  
37 CARE YOUTH UNDER THE AGE OF TWENTY-ONE WHO WAS PREVIOUSLY DISCHARGED  
38 FROM FOSTER CARE DUE TO A FAILURE TO CONSENT TO CONTINUATION OF PLACE-  
39 MENT MAY MAKE A MOTION PURSUANT TO SECTION ONE THOUSAND NINETY-ONE OF  
40 THIS ACT TO RETURN TO THE CUSTODY OF THE LOCAL COMMISSIONER OF SOCIAL  
41 SERVICES OR OTHER OFFICER, BOARD OR DEPARTMENT AUTHORIZED TO RECEIVE  
42 CHILDREN AS PUBLIC CHARGES. IN SUCH MOTION, THE YOUTH MUST CONSENT TO  
43 ENROLLMENT IN AND ATTENDANCE AT A VOCATIONAL OR EDUCATIONAL PROGRAM IN  
44 ACCORDANCE WITH PARAGRAPH TWO OF SUBDIVISION (A) OF SECTION ONE THOUSAND  
45 NINETY-ONE OF THIS ACT.

46 S 2. Subdivision (a) of section 1087 of the family court act, as added  
47 by section 27 of part A of chapter 3 of the laws of 2005, is amended to  
48 read as follows:

49 (a) "Child" shall mean a person under the age of eighteen who is  
50 placed in foster care pursuant to section three hundred fifty-eight-a,  
51 three hundred eighty-four or three hundred eighty-four-a of the social  
52 services law or pursuant to section one thousand twenty-two, one thou-  
53 sand twenty-seven, or one thousand fifty-two of this act; or directly  
54 placed with a relative pursuant to section one thousand seventeen or one  
55 thousand fifty-five of this act; or who has been freed for adoption or a  
56 person between the ages of eighteen and twenty-one who has consented to

1 continuation in foster care OR TRIAL DISCHARGE STATUS; OR A FORMER  
2 FOSTER CARE YOUTH UNDER THE AGE OF TWENTY-ONE FOR WHOM A COURT HAS  
3 GRANTED A MOTION TO PERMIT THE FORMER FOSTER CARE YOUTH TO RETURN TO THE  
4 CUSTODY OF THE LOCAL COMMISSIONER OF SOCIAL SERVICES OR OTHER OFFICER,  
5 BOARD OR DEPARTMENT AUTHORIZED TO RECEIVE CHILDREN AS PUBLIC CHARGES.

6 S 3. Section 1088 of the family court act, as added by section 27 of  
7 part A of chapter 3 of the laws of 2005, is amended to read as follows:

8 S 1088. Continuing court jurisdiction. If a child is placed pursuant  
9 to section three hundred fifty-eight-a, three hundred eighty-four, or  
10 three hundred eighty-four-a of the social services law, or pursuant to  
11 section one thousand seventeen, one thousand twenty-two, one thousand  
12 twenty-seven or one thousand fifty-two of this act, or directly placed  
13 with a relative pursuant to section one thousand seventeen or one thou-  
14 sand fifty-five of this act; or if the child is freed for adoption  
15 pursuant to section three hundred eighty-three-c, three hundred eighty-  
16 four or three hundred eighty-four-b of the social services law, the case  
17 shall remain on the court's calendar and the court shall maintain juris-  
18 diction over the case until the child is discharged from placement and  
19 all orders regarding supervision, protection or services have expired.  
20 The court shall rehear the matter whenever it deems necessary or desira-  
21 ble, or upon motion by any party entitled to notice in proceedings under  
22 this article, or by the [law guardian] ATTORNEY for the child, and when-  
23 ever a permanency hearing is required by this article. While the court  
24 maintains jurisdiction over the case, the provisions of section one  
25 thousand thirty-eight of this act shall continue to apply. THE COURT  
26 SHALL ALSO MAINTAIN JURISDICTION OVER A CASE FOR PURPOSES OF HEARING A  
27 MOTION TO PERMIT A FORMER FOSTER CARE YOUTH UNDER THE AGE OF TWENTY-ONE  
28 WHO WAS DISCHARGED FROM FOSTER CARE DUE TO A FAILURE TO CONSENT TO  
29 CONTINUATION OF PLACEMENT TO RETURN TO THE CUSTODY OF THE LOCAL COMMIS-  
30 SIONER OF SOCIAL SERVICES OR OTHER OFFICER, BOARD OR DEPARTMENT AUTHOR-  
31 IZED TO RECEIVE CHILDREN AS PUBLIC CHARGES.

32 S 4. Paragraph 1 of subdivision (a) of section 1089 of the family  
33 court act, as added by section 27 of part A of chapter 3 of the laws of  
34 2005, is amended to read as follows:

35 (1) Children freed for adoption. (I) At the conclusion of the dispo-  
36 sitional hearing at which the child was freed for adoption in a proceed-  
37 ing pursuant to section three hundred eighty-three-c, three hundred  
38 eighty-four or three hundred eighty-four-b of the social services law,  
39 the court shall set a date certain for the initial freed child permanen-  
40 cy hearing and advise all parties in court of the date set, except for  
41 the respondent or respondents. The permanency hearing shall be commenced  
42 no later than thirty days after the hearing at which the child was freed  
43 and shall be completed within thirty days, unless the court determines  
44 to hold the permanency hearing immediately upon completion of the hear-  
45 ing at which the child was freed, provided adequate notice has been  
46 given.

47 (II) AT THE CONCLUSION OF THE HEARING PURSUANT TO SECTION ONE THOUSAND  
48 NINETY-ONE OF THIS ACT WHERE THE COURT HAS GRANTED THE MOTION FOR A  
49 FORMER FOSTER CARE YOUTH WHO WAS DISCHARGED FROM FOSTER CARE DUE TO A  
50 FAILURE TO CONSENT TO CONTINUATION OF PLACEMENT TO RETURN TO THE CUSTODY  
51 OF THE LOCAL COMMISSIONER OF SOCIAL SERVICES OR OTHER OFFICER, BOARD OR  
52 DEPARTMENT AUTHORIZED TO RECEIVE CHILDREN AS PUBLIC CHARGES, THE COURT  
53 SHALL SET A DATE CERTAIN FOR A PERMANENCY HEARING AND ADVISE ALL PARTIES  
54 IN COURT OF THE DATE SET. THE PERMANENCY HEARING SHALL BE COMMENCED NO  
55 LATER THAN THIRTY DAYS AFTER THE HEARING AT WHICH THE FORMER FOSTER CARE  
56 YOUTH WAS RETURNED TO FOSTER CARE.

1 S 5. Subparagraph (ii) of paragraph 2 of subdivision (d) of section  
2 1089 of the family court act, as added by section 27 of part A of chap-  
3 ter 3 of the laws of 2005, is amended to read as follows:

4 (ii) placing the child in the custody of a fit and willing relative or  
5 other suitable person, or continuing the placement of the child until  
6 the completion of the next permanency hearing, provided, however, that  
7 no placement may be continued under this section beyond the child's  
8 eighteenth birthday without his or her consent and in no event past the  
9 child's twenty-first birthday; PROVIDED, HOWEVER, THAT A FORMER FOSTER  
10 YOUTH WHO WAS PREVIOUSLY DISCHARGED FROM FOSTER CARE DUE TO A FAILURE TO  
11 CONSENT TO CONTINUATION OF PLACEMENT MAY BE RETURNED TO THE CUSTODY OF  
12 THE LOCAL COMMISSIONER OF SOCIAL SERVICES OR OTHER OFFICER, BOARD OR  
13 DEPARTMENT AUTHORIZED TO RECEIVE CHILDREN AS PUBLIC CHARGES IF THE COURT  
14 HAS GRANTED THE MOTION OF THE FORMER FOSTER CARE YOUTH OR LOCAL SOCIAL  
15 SERVICES OFFICIAL UPON A FINDING THAT THE YOUTH HAS NO REASONABLE ALTER-  
16 NATIVE TO FOSTER CARE AND HAS CONSENTED TO ENROLLMENT IN AND ATTENDANCE  
17 AT A VOCATIONAL OR EDUCATIONAL PROGRAM IN ACCORDANCE WITH SECTION ONE  
18 THOUSAND NINETY-ONE OF THIS ACT;

19 S 6. Clause (C) of subparagraph (viii) of paragraph 2 of subdivision  
20 (d) of section 1089 of the family court act, as amended by chapter 437  
21 of the laws of 2006, is amended to read as follows:

22 (C) Where the permanency goal is return to parent and it is antic-  
23 ipated that the child may be returned home before the next scheduled  
24 permanency hearing, the court may provide the local social services  
25 district with authority to finally discharge the child to the parent  
26 without further court hearing, provided that ten days prior written  
27 notice is served upon the court and [law guardian] ATTORNEY FOR THE  
28 CHILD. If the court on its own motion or the [law guardian] ATTORNEY FOR  
29 THE CHILD on motion to the court does not request the matter to be  
30 brought for review before final discharge, no further permanency hear-  
31 ings will be required. The local social services district may also  
32 discharge the child on a trial basis to the parent unless the court has  
33 prohibited such trial discharge or unless the court has conditioned such  
34 trial discharge on another event. For the purposes of this section,  
35 trial discharge shall mean that the child is physically returned to the  
36 parent while the child remains in the care and custody of the local  
37 social services district. Permanency hearings shall continue to be held  
38 for any child who has returned to his or her parents on a trial  
39 discharge. Where the permanency goal for a [child] YOUTH aging out of  
40 foster care is another planned permanent living arrangement that  
41 includes a significant connection to an adult willing to be a permanency  
42 resource for the [child] YOUTH, the local social services district may  
43 also discharge the [child] YOUTH on a trial basis to the planned perma-  
44 nent living arrangements, unless the court has prohibited or otherwise  
45 conditioned such a trial discharge. Trial discharge for a [child] YOUTH  
46 aging out of foster care shall mean that [a child] THE YOUTH is phys-  
47 ically discharged but the local social services district retains care  
48 and custody or custody and guardianship of the child and there remains a  
49 date certain for the scheduled permanency hearing. TRIAL DISCHARGE FOR  
50 A YOUTH AGING OUT OF FOSTER CARE MAY BE EXTENDED AT EACH SCHEDULED  
51 PERMANENCY HEARING, UNTIL THE YOUTH REACHES THE AGE OF TWENTY-ONE, IF A  
52 YOUTH OVER THE AGE OF EIGHTEEN CONSENTS TO SUCH EXTENSION. PRIOR TO  
53 FINALLY DISCHARGING A YOUTH AGING OUT OF FOSTER CARE TO ANOTHER PLANNED  
54 PERMANENT LIVING ARRANGEMENT, THE LOCAL SOCIAL SERVICES OFFICIAL SHALL  
55 GIVE THE YOUTH NOTICE OF THE RIGHT TO APPLY TO REENTER FOSTER CARE WITH-  
56 IN THE EARLIER OF TWENTY-FOUR MONTHS OF THE FINAL DISCHARGE OR THE

1 YOUTH'S TWENTY-FIRST BIRTHDAY IN ACCORDANCE WITH ARTICLE TEN-B OF THIS  
2 ACT. SUCH NOTICE SHALL ALSO ADVISE THE YOUTH THAT REENTRY INTO FOSTER  
3 CARE WILL ONLY BE AVAILABLE WHERE THE FORMER FOSTER CARE YOUTH HAS NO  
4 REASONABLE ALTERNATIVE TO FOSTER CARE AND CONSENTS TO ENROLLMENT IN AND  
5 ATTENDANCE AT AN APPROPRIATE EDUCATIONAL OR VOCATIONAL PROGRAM IN  
6 ACCORDANCE WITH PARAGRAPH TWO OF SUBDIVISION (A) OF SECTION ONE THOUSAND  
7 NINETY-ONE OF THIS ACT.

8 S 7. Subdivision (a) of section 1090 of the family court act, as added  
9 by section 27 of part A of chapter 3 of the laws of 2005, is amended to  
10 read as follows:

11 (a) If [a law guardian] AN ATTORNEY for the child has been appointed  
12 by the family court in a proceeding pursuant to section three hundred  
13 fifty-eight-a, three hundred eighty-three-c, three hundred eighty-four,  
14 or three hundred eighty-four-b of the social services law, or article  
15 ten of this act, the appointment of the [law guardian] ATTORNEY shall  
16 continue without further court order or appointment, unless another  
17 appointment of [a law guardian] AN ATTORNEY has been made by the court,  
18 until the child is discharged from placement and all orders regarding  
19 supervision, protection or services have expired. THE ATTORNEY SHALL  
20 ALSO REPRESENT THE CHILD WITHOUT FURTHER ORDER OR APPOINTMENT IN ANY  
21 PROCEEDINGS UNDER ARTICLE TEN-B OF THIS ACT. All notices, reports and  
22 motions required by law shall be provided to such [law guardian] ATTOR-  
23 NEY. The [law guardian] ATTORNEY may be relieved of his or her represen-  
24 tation upon application to the court for termination of the appointment.  
25 Upon approval of the application, the court shall immediately appoint  
26 another [law guardian] ATTORNEY to whom all notices, reports, and  
27 motions required by law shall be provided.

28 S 8. The family court act is amended by adding a new article 10-B to  
29 read as follows:

30 ARTICLE 10-B

31 FORMER FOSTER CARE YOUTH RE-ENTRY PROCEEDINGS

32 SECTION 1091. MOTION TO RETURN TO FOSTER CARE PLACEMENT.

33 S 1091. MOTION TO RETURN TO FOSTER CARE PLACEMENT. A MOTION TO RETURN  
34 A FORMER FOSTER CARE YOUTH UNDER THE AGE OF TWENTY-ONE, WHO WAS  
35 DISCHARGED FROM FOSTER CARE DUE TO A FAILURE TO CONSENT TO CONTINUATION  
36 OF PLACEMENT, TO THE CUSTODY OF THE LOCAL COMMISSIONER OF SOCIAL  
37 SERVICES OR OTHER OFFICER, BOARD OR DEPARTMENT AUTHORIZED TO RECEIVE  
38 CHILDREN AS PUBLIC CHARGES, MAY BE MADE BY SUCH FORMER FOSTER CARE  
39 YOUTH, OR BY A LOCAL SOCIAL SERVICES OFFICIAL UPON THE CONSENT OF SUCH  
40 FORMER FOSTER CARE YOUTH, IF THERE IS A COMPELLING REASON FOR SUCH  
41 FORMER FOSTER CARE YOUTH TO RETURN TO FOSTER CARE; PROVIDED HOWEVER,  
42 THAT THE COURT SHALL NOT ENTERTAIN A MOTION FILED AFTER TWENTY-FOUR  
43 MONTHS FROM THE DATE OF THE FIRST FINAL DISCHARGE THAT OCCURRED ON OR  
44 AFTER THE FORMER FOSTER CARE YOUTH'S EIGHTEENTH BIRTHDAY.

45 (A) A MOTION MADE PURSUANT TO THIS SECTION BY A SOCIAL SERVICES OFFI-  
46 CIAL SHALL BE MADE BY ORDER TO SHOW CAUSE. SUCH MOTION SHALL SHOW BY  
47 AFFIDAVIT OR OTHER EVIDENCE THAT:

48 (1) THE FORMER FOSTER CARE YOUTH HAS NO REASONABLE ALTERNATIVE TO  
49 FOSTER CARE;

50 (2) THE FORMER FOSTER CARE YOUTH CONSENTS TO ENROLLMENT IN AND ATTEND-  
51 ANCE AT AN APPROPRIATE EDUCATIONAL OR VOCATIONAL PROGRAM, UNLESS  
52 EVIDENCE IS SUBMITTED THAT SUCH ENROLLMENT OR ATTENDANCE IS UNNECESSARY  
53 OR INAPPROPRIATE, GIVEN THE PARTICULAR CIRCUMSTANCES OF THE YOUTH;

54 (3) RE-ENTRY INTO FOSTER CARE IS IN THE BEST INTERESTS OF THE FORMER  
55 FOSTER CARE YOUTH; AND

(4) THE FORMER FOSTER CARE YOUTH CONSENTS TO THE RE-ENTRY INTO FOSTER CARE.

(B) A MOTION MADE PURSUANT TO THIS SECTION BY A FORMER FOSTER CARE YOUTH SHALL BE MADE BY ORDER TO SHOW CAUSE OR TEN DAYS NOTICE TO THE SOCIAL SERVICES OFFICIAL. SUCH MOTION SHALL SHOW BY AFFIDAVIT OR OTHER EVIDENCE THAT:

(1) THE REQUIREMENTS OUTLINED IN PARAGRAPHS ONE, TWO AND THREE OF SUBDIVISION (A) OF THIS SECTION ARE MET; AND

(2) THE APPLICABLE LOCAL SOCIAL SERVICES DISTRICT CONSENTS TO THE RE-ENTRY OF SUCH FORMER FOSTER CARE YOUTH, OR IF THE APPLICABLE LOCAL SOCIAL SERVICES DISTRICT REFUSES TO CONSENT TO THE RE-ENTRY OF SUCH FORMER FOSTER CARE YOUTH AND THAT SUCH REFUSAL IS UNREASONABLE.

(C) (1) IF AT ANY TIME DURING THE PENDENCY OF A PROCEEDING BROUGHT PURSUANT TO THIS SECTION THE COURT FINDS A COMPELLING REASON THAT IT IS IN THE BEST INTERESTS OF THE FORMER FOSTER CARE YOUTH TO BE RETURNED IMMEDIATELY TO THE CUSTODY OF THE LOCAL COMMISSIONER OF SOCIAL SERVICES OR OTHER OFFICER, BOARD OR DEPARTMENT AUTHORIZED TO RECEIVE CHILDREN AS PUBLIC CHARGES PENDING A FINAL DECISION ON THE MOTION, THE COURT MAY ISSUE A TEMPORARY ORDER RETURNING THE YOUTH TO THE CUSTODY OF THE LOCAL COMMISSIONER OF SOCIAL SERVICES OR OTHER OFFICER, BOARD OR DEPARTMENT AUTHORIZED TO RECEIVE CHILDREN AS PUBLIC CHARGES.

(2) WHERE THE LOCAL SOCIAL SERVICES DISTRICT HAS REFUSED TO CONSENT TO THE RE-ENTRY OF A FORMER FOSTER CARE YOUTH, AND WHERE IT IS ALLEGED PURSUANT TO PARAGRAPH TWO OF SUBDIVISION (B) OF THIS SECTION, THAT SUCH REFUSAL BY SUCH SOCIAL SERVICES DISTRICT IS UNREASONABLE, THE COURT SHALL GRANT A MOTION MADE PURSUANT TO SUBDIVISION (B) OF THIS SECTION IF THE COURT FINDS AND STATES IN WRITING THAT THE REFUSAL BY THE LOCAL SOCIAL SERVICES DISTRICT IS UNREASONABLE. FOR PURPOSES OF THIS SECTION, A COURT SHALL FIND THAT A REFUSAL BY A LOCAL SOCIAL SERVICES DISTRICT TO ALLOW A FORMER FOSTER CARE YOUTH TO RE-ENTER CARE IS UNREASONABLE IF:

(I) THE YOUTH HAS NO REASONABLE ALTERNATIVE TO FOSTER CARE;

(II) THE YOUTH CONSENTS TO ENROLLMENT IN AND ATTENDANCE AT AN APPROPRIATE EDUCATIONAL OR VOCATIONAL PROGRAM, UNLESS THE COURT FINDS A COMPELLING REASON THAT SUCH ENROLLMENT OR ATTENDANCE IS UNNECESSARY OR INAPPROPRIATE, GIVEN THE PARTICULAR CIRCUMSTANCES OF THE YOUTH; AND

(III) RE-ENTRY INTO FOSTER CARE IS IN THE BEST INTERESTS OF THE FORMER FOSTER YOUTH.

(3) UPON MAKING A DETERMINATION ON A MOTION FILED PURSUANT TO THIS SECTION, WHERE A MOTION HAS PREVIOUSLY BEEN GRANTED PURSUANT TO THIS SECTION, IN ADDITION TO THE APPLICABLE FINDINGS REQUIRED BY THIS SECTION, THE COURT SHALL GRANT THE MOTION TO RETURN A FORMER FOSTER CARE YOUTH TO THE CUSTODY OF THE LOCAL COMMISSIONER OF SOCIAL SERVICES OR OTHER OFFICER, BOARD OR DEPARTMENT AUTHORIZED TO RECEIVE CHILDREN AS PUBLIC CHARGES ONLY:

(I) UPON A FINDING THAT THERE IS A COMPELLING REASON FOR SUCH FORMER FOSTER CARE YOUTH TO RETURN TO CARE;

(II) IF THE COURT HAS NOT PREVIOUSLY GRANTED A SUBSEQUENT MOTION FOR SUCH FORMER FOSTER CARE YOUTH TO RETURN TO CARE PURSUANT TO THIS PARAGRAPH; AND

(III) UPON CONSIDERATION OF THE FORMER FOSTER CARE YOUTH'S COMPLIANCE WITH PREVIOUS ORDERS OF THE COURT, INCLUDING THE YOUTH'S PREVIOUS PARTICIPATION IN AN APPROPRIATE EDUCATIONAL OR VOCATIONAL PROGRAM, IF APPLICABLE.

S 9. Paragraph (d) of subdivision 3 of section 371 of the social services law, as amended by chapter 722 of the laws of 1978, is amended and a new paragraph (e) is added to read as follows:

1 (d) a person under the age of eighteen who is without a place of shel-  
2 ter where supervision and care are available[.], OR

3 (E) A FORMER FOSTER CARE YOUTH UNDER THE AGE OF TWENTY-ONE WHO WAS  
4 PREVIOUSLY PLACED IN THE CARE AND CUSTODY OR CUSTODY AND GUARDIANSHIP OF  
5 THE LOCAL COMMISSIONER OF SOCIAL SERVICES OR OTHER OFFICER, BOARD OR  
6 DEPARTMENT AUTHORIZED TO RECEIVE CHILDREN AS PUBLIC CHARGES, AND WHO WAS  
7 DISCHARGED FROM FOSTER CARE DUE TO A FAILURE TO CONSENT TO CONTINUATION  
8 IN PLACEMENT, WHO HAS RETURNED TO FOSTER CARE PURSUANT TO SECTION ONE  
9 THOUSAND NINETY-ONE OF THE FAMILY COURT ACT.

10 S 10. Subparagraph (i) of paragraph (a) of subdivision 1 of section  
11 409-a of the social services law, as amended by chapter 87 of the laws  
12 of 1993, is amended to read as follows:

13 (i) the child will be placed, RETURNED TO or continued in foster care  
14 unless such services are provided and that it is reasonable to believe  
15 that by providing such services the child will be able to remain with or  
16 be returned to his or her family, AND FOR A FORMER FOSTER CARE YOUTH  
17 UNDER THE AGE OF TWENTY-ONE WHO WAS PREVIOUSLY PLACED IN THE CARE AND  
18 CUSTODY OR CUSTODY AND GUARDIANSHIP OF THE LOCAL COMMISSIONER OF SOCIAL  
19 SERVICES OR OTHER OFFICER, BOARD OR DEPARTMENT AUTHORIZED TO RECEIVE  
20 CHILDREN AS PUBLIC CHARGES WHERE IT IS REASONABLE TO BELIEVE THAT BY  
21 PROVIDING SUCH SERVICES THE FORMER FOSTER CARE YOUTH WILL AVOID A RETURN  
22 TO FOSTER CARE or

23 S 11. This act shall take effect on the ninetieth day after it shall  
24 have become a law.