

5266

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. MONTGOMERY -- 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 notification of the court, the parties and the attorney
for the child, when a child protective or foster care agency transfers
a child from one foster home or other foster care placement to another

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

1 Section 1. The family court act is amended by adding a new section
2 1017-a to read as follows:
3 S 1017-A. CHANGE OF PLACEMENT WITHOUT PRIOR COURT APPROVAL. 1. WHEN
4 THE COURT HAS REMANDED OR PLACED THE CHILD WITH THE LOCAL COMMISSIONER
5 OF SOCIAL SERVICES IN A PROCEEDING UNDER THIS ARTICLE AND HAS DIRECTED
6 PURSUANT TO SUBPARAGRAPH (III) OF PARAGRAPH (A) OF SUBDIVISION TWO OR
7 PARAGRAPH (B) OF SUBDIVISION TWO OF SECTION ONE THOUSAND SEVENTEEN OF
8 THIS PART, OR PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH (A) OF SECTION
9 ONE THOUSAND FIFTY-FIVE OF THIS CHAPTER, OR PURSUANT TO CLAUSE (I) OF
10 SUBPARAGRAPH (VIII) OF PARAGRAPH TWO OF SUBDIVISION (D) OF SECTION ONE
11 THOUSAND EIGHTY-NINE OF THIS CHAPTER, THAT THE COMMISSIONER SHALL HAVE
12 THE CHILD RESIDE IN A SPECIFIC CERTIFIED OR APPROVED FOSTER HOME, THE
13 COMMISSIONER MAY NOT CHANGE THE CHILD'S FOSTER CARE PLACEMENT WITHOUT
14 PRIOR COURT APPROVAL EXCEPT IN THOSE CIRCUMSTANCES SET FORTH IN PARA-
15 GRAPH (D) OF SUBDIVISION TWO OF THIS SECTION.
16 2. (A) WHEN THE COURT HAS REMANDED OR PLACED THE CHILD WITH THE LOCAL
17 COMMISSIONER OF SOCIAL SERVICES IN A PROCEEDING UNDER THIS ARTICLE, OR
18 EXTENDED SUCH PLACEMENT UNDER ARTICLE TEN-A OF THIS CHAPTER, WITH NO
19 DIRECTION THAT THE COMMISSIONER SHALL HAVE THE CHILD RESIDE IN A SPECIF-
20 IC CERTIFIED OR APPROVED FOSTER HOME, THE COMMISSIONER MAY CHANGE THE
21 CHILD'S FOSTER CARE PLACEMENT WITHOUT PRIOR COURT APPROVAL, IN ACCORD-
22 ANCE WITH PARAGRAPHS (B) AND (D) OF THIS SUBDIVISION AND THE SOCIAL
23 SERVICES LAW AND APPLICABLE REGULATIONS.

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

LBD11262-01-9

1 (B) THE COMMISSIONER SHALL, AS SOON AS PRACTICABLE AFTER DETERMINING
2 THAT A CHANGE OF FOSTER CARE PLACEMENT IS NECESSARY, BUT IN NO EVENT
3 LATER THAN TEN DAYS PRIOR TO THE REMOVAL OF THE CHILD FROM HIS OR HER
4 PRESENT FOSTER HOME OR OTHER FOSTER CARE PLACEMENT, NOTIFY THE COURT,
5 THE COUNSEL FOR THE PARENT OR PARENTS OR OTHER PERSON OR PERSONS LEGALLY
6 RESPONSIBLE FOR THE CARE OF THE CHILD, AND THE ATTORNEY FOR THE CHILD,
7 BY PHONE, E-MAIL OR FACSIMILE TRANSMISSION, OF THE CHANGE OF PLACEMENT.
8 IN SUCH NOTICE, THE COMMISSIONER SHALL PROVIDE THE DATE THE CHANGE OF
9 PLACEMENT WILL TAKE PLACE, THE REASONS FOR THE CHANGE, AND THE NAME AND
10 THE PHONE NUMBER OF A SOCIAL SERVICES OFFICIAL WHO MAY BE CONTACTED FOR
11 FURTHER INFORMATION.

12 (C) IF TIMELY NOTICE PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION IS
13 NOT PROVIDED, THE COMMISSIONER MAY NOT CHANGE THE FOSTER CARE PLACEMENT
14 UNTIL AT LEAST TEN DAYS AFTER NOTICE HAS BEEN PROVIDED IN THE MANNER SET
15 FORTH IN PARAGRAPH (B) OF THIS SUBDIVISION.

16 (D) WHEN THE HEALTH OR SAFETY OF THE CHILD REQUIRES THAT THE CHILD BE
17 REMOVED IMMEDIATELY FROM THE FOSTER HOME OR OTHER FOSTER CARE PLACEMENT,
18 OR WHEN THE FOSTER PARENT REQUESTS IMMEDIATE REMOVAL OF THE CHILD FROM
19 THE FOSTER HOME, OR WHEN THE COMMISSIONER HAS OBTAINED THE CONSENT OF
20 THE PARENT OR OTHER PERSON LEGALLY RESPONSIBLE FOR THE CARE OF THE CHILD
21 AND THE ATTORNEY FOR THE CHILD, THE COMMISSIONER MAY REMOVE THE CHILD
22 WITHOUT COURT APPROVAL REQUIRED BY SUBDIVISION ONE OF THIS SECTION AND
23 WITHOUT PROVIDING NOTICE PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION.
24 HOWEVER, SUCH NOTICE SHALL BE PROVIDED AS SOON AS PRACTICABLE AFTER
25 REMOVAL.

26 3. WHEN THE COMMISSIONER HAS MADE A DETERMINATION TO DISCHARGE THE
27 CHILD ON A TRIAL BASIS TO THE CUSTODY OF THE PARENT OR OTHER PERSON
28 LEGALLY RESPONSIBLE FOR THE CHILD'S CARE, TIMELY ADVANCE NOTICE MUST BE
29 PROVIDED TO THE COURT AND THE ATTORNEY FOR THE CHILD IN THE MANNER SET
30 FORTH IN PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION.

31 4. NOTICE PURSUANT TO PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION
32 NEED NOT BE PROVIDED WHEN THE COMMISSIONER HAS PREVIOUSLY PROVIDED, ON
33 THE RECORD DURING THE PROCEEDINGS IN FAMILY COURT, NOTICE OF A CHANGE OF
34 PLACEMENT, AND THE DATE AND REASONS FOR THE CHANGE.

35 S 2. Subdivision 3 of section 358-a of the social services law is
36 amended by adding a new paragraph (g) to read as follows:

37 (G) (I) THE ORDER GRANTING THE PETITION OF A SOCIAL SERVICES OFFICIAL
38 AND APPROVING AN INSTRUMENT EXECUTED PURSUANT TO SECTION THREE HUNDRED
39 EIGHTY-FOUR-A OF THIS CHAPTER MAY DIRECT THAT THE COMMISSIONER SHALL
40 HAVE THE CHILD RESIDE IN A SPECIFIC CERTIFIED OR APPROVED FOSTER HOME.
41 IN THE EVENT THE COURT SO DIRECTS, THE COMMISSIONER MAY NOT CHANGE THE
42 CHILD'S PLACEMENT WITHOUT PRIOR COURT APPROVAL EXCEPT IN THOSE CIRCUM-
43 STANCES SET FORTH IN SUBPARAGRAPH (V) OF THIS PARAGRAPH.

44 (II) WHEN THE COURT HAS NOT SO DIRECTED, THE COMMISSIONER MAY CHANGE
45 THE CHILD'S PLACEMENT WITHOUT PRIOR COURT APPROVAL, IN ACCORDANCE WITH
46 SUBPARAGRAPHS (III) AND (V) OF THIS PARAGRAPH AND THIS CHAPTER AND
47 APPLICABLE REGULATIONS.

48 (III) THE COMMISSIONER SHALL, AS SOON AS PRACTICABLE AFTER DETERMINING
49 THAT A CHANGE OF FOSTER CARE PLACEMENT IS NECESSARY, BUT IN NO EVENT
50 LATER THAN TEN DAYS PRIOR TO THE REMOVAL OF THE CHILD FROM HIS OR HER
51 PRESENT FOSTER HOME OR OTHER FOSTER CARE PLACEMENT, NOTIFY THE COURT,
52 THE COUNSEL FOR THE PARENT OR PARENTS OR OTHER PERSON OR PERSONS LEGALLY
53 RESPONSIBLE FOR THE CHILD, AND THE ATTORNEY FOR THE CHILD, BY PHONE,
54 E-MAIL OR FACSIMILE TRANSMISSION, OF THE CHANGE OF PLACEMENT. IN SUCH
55 NOTICE, THE COMMISSIONER SHALL PROVIDE THE DATE THE CHANGE OF PLACEMENT
56 WILL TAKE PLACE, THE REASONS FOR THE CHANGE, AND THE NAME AND PHONE

1 NUMBER OF A SOCIAL SERVICES OFFICIAL WHO MAY BE CONTACTED FOR FURTHER
2 INFORMATION.

3 (IV) IF TIMELY NOTICE PURSUANT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH
4 IS NOT PROVIDED, THE COMMISSIONER MAY NOT CHANGE THE PLACEMENT UNTIL AT
5 LEAST TEN DAYS AFTER NOTICE HAS BEEN PROVIDED IN THE MANNER SET FORTH
6 ABOVE.

7 (V) WHEN THE HEALTH OR SAFETY OF THE CHILD REQUIRES THAT THE CHILD BE
8 REMOVED IMMEDIATELY FROM THE FOSTER HOME OR OTHER FOSTER CARE PLACEMENT,
9 OR WHEN THE FOSTER PARENT REQUESTS IMMEDIATE REMOVAL OF THE CHILD FROM
10 THE FOSTER HOME, OR WHEN THE COMMISSIONER HAS OBTAINED THE CONSENT OF
11 THE PARENT OR OTHER PERSON LEGALLY RESPONSIBLE FOR THE CARE OF THE
12 CHILD, AND THE ATTORNEY FOR THE CHILD, THE COMMISSIONER MAY REMOVE THE
13 CHILD WITHOUT COURT APPROVAL REQUIRED BY SUBPARAGRAPH (I) OF THIS PARA-
14 GRAPH AND WITHOUT PROVIDING NOTICE PURSUANT TO SUBPARAGRAPH (III) OF
15 THIS PARAGRAPH. HOWEVER, SUCH NOTICE SHALL BE PROVIDED AS SOON AS PRAC-
16 TICABLE AFTER REMOVAL.

17 (VI) WHEN THE COMMISSIONER HAS MADE A DETERMINATION TO DISCHARGE THE
18 CHILD ON A TRIAL BASIS TO THE CUSTODY OF THE PARENT OR OTHER PERSON
19 LEGALLY RESPONSIBLE FOR THE CHILD'S CARE, TIMELY ADVANCE NOTICE MUST BE
20 PROVIDED TO THE COURT AND THE ATTORNEY FOR THE CHILD IN THE MANNER SET
21 FORTH IN SUBPARAGRAPH (III) OF THIS PARAGRAPH.

22 (VII) NOTICE PURSUANT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH NEED NOT
23 BE PROVIDED WHEN THE COMMISSIONER HAS PREVIOUSLY PROVIDED, ON THE RECORD
24 DURING PROCEEDINGS IN FAMILY COURT, NOTICE OF A CONTEMPLATED CHANGE OF
25 PLACEMENT, AND THE DATE AND REASONS FOR THE CHANGE.

26 S 3. Subparagraph (viii) of paragraph 2 of subdivision (d) of section
27 1089 of the family court act is amended by adding a new clause (I) to
28 read as follows:

29 (I) DIRECTING THAT THE COMMISSIONER SHALL HAVE THE CHILD RESIDE IN A
30 SPECIFIC CERTIFIED OR APPROVED FOSTER HOME.

31 S 4. The family court act is amended by adding a new section 1091 to
32 read as follows:

33 S 1091. CHANGE OF PLACEMENT OF CHILDREN WHO HAVE BEEN FREED FOR
34 ADOPTION. 1. WHEN THE COURT HAS DIRECTED PURSUANT TO ITEM (I) OF CLAUSE
35 (B) OF SUBPARAGRAPH (VIII) OF PARAGRAPH TWO OF SUBDIVISION (D) OF
36 SECTION ONE THOUSAND EIGHTY-NINE OF THIS ARTICLE THAT THE CHILD BE
37 PLACED FOR ADOPTION IN THE FOSTER FAMILY HOME WHERE HE OR SHE RESIDES OR
38 HAS RESIDED OR WITH ANY OTHER SUITABLE PERSON OR PERSONS, THE AGENCY TO
39 WHICH GUARDIANSHIP AND CUSTODY HAS BEEN COMMITTED MAY NOT CHANGE SUCH
40 CHILD'S FOSTER CARE PLACEMENT WITHOUT PRIOR COURT APPROVAL, EXCEPT IN
41 THOSE CIRCUMSTANCES SET FORTH IN PARAGRAPH (D) OF SUBDIVISION TWO OF
42 THIS SECTION.

43 2. (A) WHEN THE COURT HAS NOT DIRECTED THAT THE CHILD BE PLACED FOR
44 ADOPTION IN A SPECIFIC FOSTER HOME, THE AGENCY TO WHICH GUARDIANSHIP AND
45 CUSTODY HAS BEEN COMMITTED MAY CHANGE THE CHILD'S FOSTER HOME OR OTHER
46 FOSTER CARE PLACEMENT WITHOUT PRIOR COURT APPROVAL, IN ACCORDANCE WITH
47 PARAGRAPHS (B) AND (D) OF THIS SUBDIVISION AND THE SOCIAL SERVICES LAW
48 AND APPLICABLE REGULATIONS.

49 (B) THE AGENCY SHALL, AS SOON AS PRACTICABLE AFTER DETERMINING THAT A
50 CHANGE OF FOSTER CARE PLACEMENT IS NECESSARY, BUT IN NO EVENT LATER THAN
51 TEN DAYS PRIOR TO THE REMOVAL OF THE CHILD FROM HIS OR HER PRESENT
52 FOSTER HOME OR OTHER FOSTER CARE PLACEMENT, NOTIFY THE COURT, AND THE
53 ATTORNEY FOR THE CHILD, BY PHONE, E-MAIL OR FACSIMILE TRANSMISSION, OF
54 THE CHANGE OF PLACEMENT. IN SUCH NOTICE, THE AGENCY SHALL PROVIDE THE
55 DATE THE CHANGE OF PLACEMENT WILL TAKE PLACE, THE REASONS FOR THE

1 CHANGE, AND THE NAME AND PHONE NUMBER OF A SOCIAL SERVICES OFFICIAL WHO
2 MAY BE CONTACTED FOR FURTHER INFORMATION.

3 (C) IF TIMELY NOTICE PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION IS
4 NOT PROVIDED, THE AGENCY MAY NOT CHANGE THE FOSTER CARE PLACEMENT UNTIL
5 AT LEAST TEN DAYS AFTER NOTICE HAS BEEN PROVIDED IN THE MANNER SET FORTH
6 IN PARAGRAPH (B) OF THIS SUBDIVISION.

7 (D) WHEN THE HEALTH OR SAFETY OF THE CHILD REQUIRES THAT THE CHILD BE
8 REMOVED IMMEDIATELY FROM THE FOSTER HOME OR OTHER FOSTER CARE PLACEMENT,
9 OR WHEN THE FOSTER PARENT REQUESTS IMMEDIATE REMOVAL OF THE CHILD FROM
10 THE FOSTER HOME, OR WHEN THE AGENCY HAS OBTAINED THE CONSENT OF THE
11 ATTORNEY FOR THE CHILD, THE AGENCY MAY REMOVE THE CHILD WITHOUT COURT
12 APPROVAL REQUIRED BY SUBDIVISION ONE OF THIS SECTION AND WITHOUT PROVID-
13 ING NOTICE PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION. HOWEVER, SUCH
14 NOTICE SHALL BE PROVIDED AS SOON AS PRACTICABLE AFTER REMOVAL.

15 (E) NOTICE PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION NEED NOT BE
16 PROVIDED WHEN THE AGENCY HAS PREVIOUSLY PROVIDED, ON THE RECORD DURING
17 PROCEEDINGS IN FAMILY COURT, NOTICE OF A CHANGE OF PLACEMENT, AND THE
18 DATE AND REASONS FOR THE CHANGE.

19 S 5. This act shall take effect on the ninetieth day after it shall
20 have become a law; provided, however, that effective immediately, the
21 addition, amendment and/or repeal of any rule or regulation necessary
22 for the implementation of this act on its effective date are authorized
23 and directed to be made and completed on or before such effective date.