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

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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The family court act is amended by adding a new section 1017-a to read as follows:

S 1017-A. CHANGE OF PLACEMENT WITHOUT PRIOR COURT APPROVAL. 1. WHEN THE COURT HAS REMANDED OR PLACED THE CHILD WITH THE LOCAL COMMISSIONER OF SOCIAL SERVICES IN A PROCEEDING UNDER THIS ARTICLE AND HAS DIRECTED PURSUANT TO SUBPARAGRAPH (III) OF PARAGRAPH (A) OF SUBDIVISION TWO OR PARAGRAPH (B) OF SUBDIVISION TWO OF SECTION ONE THOUSAND SEVENTEEN OF THIS PART, OR PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH (A) OF SECTION ONE THOUSAND FIFTY-FIVE OF THIS CHAPTER, OR PURSUANT TO CLAUSE (I) OF SUBPARAGRAPH (VIII) OF PARAGRAPH TWO OF SUBDIVISION (D) OF SECTION ONE THOUSAND EIGHTY-NINE OF THIS CHAPTER, THAT THE COMMISSIONER SHALL HAVE THE CHILD RESIDE IN A SPECIFIC CERTIFIED OR APPROVED FOSTER HOME, THE COMMISSIONER MAY NOT CHANGE THE CHILD'S FOSTER CARE PLACEMENT WITHOUT PRIOR COURT APPROVAL EXCEPT IN THOSE CIRCUMSTANCES SET FORTH IN PARAGRAPH (D) OF SUBDIVISION TWO OF THIS SECTION.

2. (A) WHEN THE COURT HAS REMANDED OR PLACED THE CHILD WITH THE LOCAL COMMISSIONER OF SOCIAL SERVICES IN A PROCEEDING UNDER THIS ARTICLE, OR EXTENDED SUCH PLACEMENT UNDER ARTICLE TEN-A OF THIS CHAPTER, WITH NO DIRECTION THAT THE COMMISSIONER SHALL HAVE THE CHILD RESIDE IN A SPECIFIC CERTIFIED OR APPROVED FOSTER HOME, THE COMMISSIONER MAY CHANGE THE CHILD'S FOSTER CARE PLACEMENT WITHOUT PRIOR COURT APPROVAL, IN ACCORDANCE WITH PARAGRAPHS (B) AND (D) OF THIS SUBDIVISION AND THE SOCIAL SERVICES LAW AND APPLICABLE REGULATIONS.

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

LBD11262-01-9

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

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

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

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

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

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

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

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

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

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

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

(V) WHEN THE HEALTH OR SAFETY OF THE CHILD REQUIRES THAT THE CHILD BE REMOVED IMMEDIATELY FROM THE FOSTER HOME OR OTHER FOSTER CARE PLACEMENT, OR WHEN THE FOSTER PARENT REQUESTS IMMEDIATE REMOVAL OF THE CHILD FROM THE FOSTER HOME, OR WHEN THE COMMISSIONER HAS OBTAINED THE CONSENT OF THE PARENT OR OTHER PERSON LEGALLY RESPONSIBLE FOR THE CARE OF THE CHILD, AND THE ATTORNEY FOR THE CHILD, THE COMMISSIONER MAY REMOVE THE CHILD WITHOUT COURT APPROVAL REQUIRED BY SUBPARAGRAPH (I) OF THIS PARAGRAPH AND WITHOUT PROVIDING NOTICE PURSUANT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH. HOWEVER, SUCH NOTICE SHALL BE PROVIDED AS SOON AS PRACTICABLE AFTER REMOVAL.

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

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

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

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

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

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

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

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

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

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

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

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

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