

2084

2009-2010 Regular Sessions

I N   A S S E M B L Y

January 15, 2009

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Introduced by M. of A. PEOPLES -- read once and referred to the Committee on Judiciary

AN ACT to amend the family court act, in relation to establishing kinship guardianship

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

1     Section 1. The family court act is amended by adding a new section  
2     1059-a to read as follows:  
3     S 1059-A. KINSHIP GUARDIANSHIP. 1. DEFINITIONS. WHEN USED IN THIS  
4     SECTION:  
5     A. "KINSHIP FOSTER CHILD" SHALL MEAN A CHILD PLACED WITH A SOCIAL  
6     SERVICES OFFICIAL PURSUANT TO SECTION ONE THOUSAND FIFTY-FIVE OF THIS  
7     ARTICLE WHO IS PLACED EITHER (I) AS A KINSHIP FOSTER CHILD PURSUANT TO  
8     REGULATIONS OF THE OFFICE OF CHILDREN AND FAMILY SERVICES OR (II) AS A  
9     FOSTER CHILD AND WHO HAS BEEN PLACED BY THE SOCIAL SERVICES OFFICIAL OR  
10    OTHER AUTHORIZED AGENCY IN THE HOME OF A RELATIVE WITHIN THE THIRD  
11    DEGREE;  
12    B. "KINSHIP FOSTER PARENT" SHALL MEAN A FOSTER PARENT WHO IS APPROVED  
13    OR CERTIFIED PURSUANT TO SECTION THREE HUNDRED SEVENTY-EIGHT OF THE  
14    SOCIAL SERVICES LAW AND WHO IS CARING FOR A CHILD WHO IS RELATED WITHIN  
15    THE THIRD DEGREE.  
16    2. PETITION. A KINSHIP FOSTER PARENT OR A SOCIAL SERVICES OFFICIAL MAY  
17    FILE A PETITION WITH THE FAMILY COURT WHICH PLACED THE CHILD PURSUANT TO  
18    SECTION ONE THOUSAND FIFTY-FIVE OF THIS ARTICLE TO HAVE THE KINSHIP  
19    FOSTER PARENT APPOINTED AS KINSHIP GUARDIAN FOR THE CHILD. THE PETITION  
20    SHALL ALLEGE THAT THE CHILD WAS PLACED, THAT MORE THAN FIFTEEN MONTHS  
21    HAVE PASSED SINCE THE DATE OF THE ORDER PLACING THE CHILD, THAT THE  
22    PARENTS OF THE CHILD ARE PRESENTLY AND FOR THE FORESEEABLE FUTURE UNABLE  
23    TO PROVIDE PROPER AND ADEQUATE CARE FOR THE CHILD, NOTWITHSTANDING THE  
24    AUTHORIZED AGENCY'S DILIGENT EFFORTS TO ENCOURAGE AND STRENGTHEN THE  
25    PARENTAL RELATIONSHIP, THAT THE PROSPECTIVE KINSHIP GUARDIANS CONSENT TO

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

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1 THE APPOINTMENT AND THAT THE CHILD HAS RESIDED WITH THEM FOR MORE THAN  
2 EIGHTEEN MONTHS, AND THAT IT WOULD BE IN THE BEST INTERESTS OF THE CHILD  
3 FOR THE PETITION TO BE GRANTED.

4 3. NOTICE. NOTICE OF THE PETITION AND A COPY OF THE PETITION SHALL BE  
5 SERVED UPON THE SOCIAL SERVICES OFFICIAL WITH WHOM THE CHILD IS PLACED,  
6 THE PARENTS OF THE CHILD, THE KINSHIP FOSTER PARENTS OF THE CHILD, AND  
7 THE LAW GUARDIAN OF THE CHILD, EACH OF WHOM SHALL BE PARTIES TO THE  
8 PROCEEDING.

9 4. HEARING AND DETERMINATION. IF THE COURT FINDS THAT THE ELEMENTS OF  
10 THE PETITION HAVE BEEN PROVEN BY A FAIR PREPONDERANCE OF THE EVIDENCE,  
11 OR UPON THE CONSENT OF ALL PARTIES, THE COURT SHALL GRANT THE PETITION.

12 5. ORDERS. AN ORDER APPOINTING A PERSON AS A KINSHIP GUARDIAN SHALL  
13 AWARD CUSTODY OF THE CHILD TO THE KINSHIP GUARDIAN. A KINSHIP GUARDIAN  
14 SHALL HAVE THE SAME AUTHORITY AS A PARENT TO CONSENT ON BEHALF OF A  
15 CHILD, EXCEPT THAT A KINSHIP GUARDIAN SHALL NOT CONSENT TO THE ADOPTION  
16 OR SURRENDER OF A CHILD.

17 6. MAINTENANCE SUBSIDY. THE SOCIAL SERVICES OFFICIAL WITH WHOM THE  
18 CHILD WAS PLACED SHALL MAKE MONTHLY PAYMENTS TO THE KINSHIP GUARDIAN AS  
19 IF THE CHILD HAD BEEN PLACED UNDER SECTIONS FOUR HUNDRED FIFTY-THREE AND  
20 FOUR HUNDRED FIFTY-FOUR OF THE SOCIAL SERVICES LAW, AND SUBJECT TO THE  
21 PROCEDURES, LIMITATIONS, AND MINIMUM PAYMENTS OF SUCH SECTIONS.

22 7. RIGHTS OF THE PARENTS. THE APPOINTMENT OF A KINSHIP GUARDIAN SHALL  
23 NOT AFFECT OR IMPAIR THE VISITATION RIGHTS OF A PARENT.

24 8. VACATING ORDERS. A PARENT MAY APPLY FOR AN ORDER VACATING THE  
25 APPOINTMENT OF THE KINSHIP GUARDIAN. THE COURT SHALL VACATE THE  
26 APPOINTMENT AND AWARD CUSTODY OF THE CHILD TO THE PARENT UPON A SHOWING  
27 THAT THE PARENT IS ABLE TO PROVIDE PROPER AND ADEQUATE CARE FOR THE  
28 CHILD AND ONE OR MORE OF THE FOLLOWING CONDITIONS EXIST:

29 A. THE KINSHIP GUARDIAN IS UNFIT;

30 B. THE KINSHIP GUARDIAN HAS NEGLECTED HIS OR HER DUTIES;

31 C. THE KINSHIP GUARDIAN IS UNWILLING OR UNABLE TO CONTINUE THE  
32 APPOINTMENT; OR

33 D. THE RELATIONSHIP BETWEEN THE KINSHIP GUARDIAN AND THE CHILD IS NO  
34 LONGER IN THE BEST INTEREST OF THE CHILD.

35 S 2. This act shall take effect April 1, 2010.