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

2309

2009-2010 Regular Sessions

I N A S S E M B L Y

January 15, 2009

Introduced by M. of A. V. LOPEZ, CLARK -- Multi-Sponsored by -- M. of A. CHRISTENSEN, P. RIVERA, TOWNS -- read once and referred to the Committee on Children and Families

AN ACT to amend the family court act and the social services law, in relation to clarifying the procedures for the emergency removal of children from their homes and repealing certain provisions of the family court act and the social services law relating thereto

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

Section 1. Paragraphs (i) and (ii) of subdivision (a) of section 213 of the family court act, paragraph (i) as amended by chapter 727 of the laws of 1989 and paragraph (ii) as amended by chapter 920 of the laws of 1982, are amended to read as follows:

(i) the number of children temporarily removed WITHOUT COURT ORDER under section one thousand twenty-two [before the filing of a petition, the number of children temporarily removed without court order under section ten hundred twenty-four] of this act, and the period of time between such removal and the filing of a petition;

(ii) the number of children temporarily removed under section one thousand twenty-seven [after the filing of a petition] and the period of time that passed after such removal until its termination;

S 2. Part 2 of article 10 of the family court act is REPEALED and a new part 2 is added to read as follows:

PART 2

TEMPORARY REMOVAL AND PRELIMINARY ORDERS

SECTION 1021. DEFINITIONS.
1022. REMOVAL OF CHILDREN WITHOUT COURT ORDER.
1023. NOTICE.
1024. CHILDREN TEMPORARILY REMOVED.
1025. PRELIMINARY HEARINGS.
1026. IMMUNITY.

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

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1027. ORDERS.
1028. APPLICATION TO RETURN CHILD TEMPORARILY REMOVED.
1029. TEMPORARY ORDER OF PROTECTION.
1030. ORDER OF VISITATION BY A RESPONDENT.

S 1021. DEFINITIONS. FOR THE PURPOSES OF THIS PART:

(A) "CUSTODIAN" SHALL MEAN THE PARENT, GUARDIAN, CUSTODIAN OR OTHER PERSON LEGALLY RESPONSIBLE FOR THE CHILD'S CARE, AS DEFINED IN SUBDIVISION (G) OF SECTION ONE THOUSAND TWELVE OF THIS ARTICLE.

(B) "REMOVAL" SHALL MEAN THE PHYSICAL REMOVAL OF THE CHILD FROM HIS OR HER HOME OR OTHER PLACE WHERE HE OR SHE IS RESIDING, OR THE HOLDING OF A CHILD IN A HOSPITAL OR OTHER INSTITUTION, OR IN THE CARE OF A PHYSICIAN, OR THE INTERFERENCE WITH THE CUSTODY OF A CUSTODIAN, WITHOUT THE CONSENT OF THE CUSTODIAN.

(C) "IMMINENT DANGER" SHALL MEAN A SUBSTANTIAL RISK OF SERIOUS HARM IN THE IMMEDIATE FUTURE TO THE CHILD'S PHYSICAL OR MENTAL HEALTH. A FINDING OF IMMINENT DANGER SHALL ALSO CONSTITUTE A DETERMINATION THAT CONTINUATION IN THE CHILD'S HOME WOULD BE CONTRARY TO THE BEST INTERESTS OF THE CHILD.

(D) "AUTHORIZED CHILD PROTECTIVE AGENT" SHALL MEAN A PEACE OFFICER, ACTING PURSUANT TO HIS OR HER SPECIAL DUTIES, A POLICE OFFICER, A LAW ENFORCEMENT OFFICIAL, AN AGENT OF A DULY INCORPORATED SOCIETY FOR THE PREVENTION OF CRUELTY TO CHILDREN, OR A DESIGNATED EMPLOYEE OF A CITY OR COUNTY DEPARTMENT OF SOCIAL SERVICES.

(E) "PAROLE" SHALL MEAN THE TEMPORARY RELEASE OF A CHILD TO A PERSON OR PERSONS. AN ORDER OF PAROLE IS NOT AN ORDER OF CUSTODY.

(F) "REMAND" SHALL MEAN THE TEMPORARY TRANSFER OF CARE AND CUSTODY OF A CHILD TO AN AUTHORIZED AGENCY. AN ORDER OF REMAND IS NOT AN ORDER OF PLACEMENT IN ACCORDANCE WITH SECTION ONE THOUSAND FIFTY-FIVE OF THIS ARTICLE.

S 1022. REMOVAL OF CHILDREN WITHOUT COURT ORDER. (A) AN AUTHORIZED CHILD PROTECTIVE AGENT WHO HAS REASONABLE CAUSE TO BELIEVE THAT A CHILD SUFFERS FROM ABUSE OR NEGLECT BY THE CHILD'S CUSTODIAN TO THE EXTENT THAT IMMEDIATE REMOVAL OF THE CHILD IS NECESSARY TO AVOID IMMINENT DANGER TO THE CHILD MAY REMOVE OR DETAIN THE CHILD WITHOUT COURT ORDER WHERE THERE IS NOT ENOUGH TIME TO FILE A PETITION AND HOLD A PRELIMINARY HEARING PURSUANT TO THIS PART AND THE PROVISION OF PREVENTIVE SERVICES, INCLUDING, WHERE APPROPRIATE, ARRANGING CARE FOR A CHILD LEFT UNATTENDED, WILL NOT OBVIATE THE NECESSITY FOR THE REMOVAL. THE FACT THAT A CHILD IS IN A HOSPITAL, SCHOOL OR OTHER INSTITUTION SHALL CREATE A REBUTTABLE PRESUMPTION THAT THERE IS SUFFICIENT TIME TO OBTAIN AN ORDER. IN ANY OTHER CASE, A CHILD MAY ONLY BE REMOVED PURSUANT TO AN ORDER ISSUED PURSUANT TO SECTION ONE THOUSAND TWENTY-SEVEN OF THIS PART, UPON A HEARING HELD PURSUANT TO SECTION ONE THOUSAND TWENTY-FIVE OF THIS PART.

(B) IF A PHYSICIAN OR PERSON IN CHARGE OF A HOSPITAL OR SIMILAR INSTITUTION HAS REASONABLE CAUSE TO BELIEVE THAT A CHILD IS IN IMMINENT DANGER IF THE CHILD REMAINS WITH OR RETURNS TO THE CUSTODIAN OR PLACE OF RESIDENCE, SUCH PERSON SHALL TAKE ALL NECESSARY MEASURES TO PROTECT THE CHILD, INCLUDING, WHERE APPROPRIATE, DETAINING THE CHILD AND TURNING CUSTODY OF THE CHILD OVER TO THE LOCAL CHILD PROTECTIVE SERVICES. SUCH AUTHORITY TO DETAIN THE CHILD SHALL EXPIRE AT 5:00 P.M. ON THE NEXT COURT DAY, UNLESS EXTENDED BY AN ORDER ISSUED PURSUANT TO THIS PART.

(C) A PERSON REMOVING OR DETAINING A CHILD SHALL INFORM THE COURT AND MAKE A REPORT PURSUANT TO TITLE SIX OF ARTICLE SIX OF THE SOCIAL SERVICES LAW NO LATER THAN THE NEXT COURT DAY. UPON BEING INFORMED THAT THERE HAS BEEN AN EMERGENCY REMOVAL OR DETENTION OF A CHILD PURSUANT TO

THIS PART, AN APPROPRIATE PERSON DESIGNATED BY THE COURT SHALL MAKE EVERY REASONABLE EFFORT TO COMMUNICATE IMMEDIATELY WITH THE CHILD'S PARENTS AND CUSTODIANS, IF ANY, THE INFORMATION DESCRIBED IN SUBDIVISION (D) OF THIS SECTION.

(D) IF A CHILD IS REMOVED WITHOUT COURT ORDER PURSUANT TO THIS SECTION, THE PERSON REMOVING THE CHILD SHALL, COINCIDENT WITH REMOVAL, GIVE WRITTEN NOTICE TO THE CUSTODIAN OF:

(I) NAME, TITLE, ORGANIZATION, ADDRESS AND TELEPHONE NUMBER OF THE PERSON REMOVING THE CHILD;

(II) THE FACILITY, ADDRESS, AND TELEPHONE NUMBER OF THE PLACE WHERE THE CHILD WILL BE TAKEN, IF AVAILABLE;

(III) THE TELEPHONE NUMBER OF THE PERSON TO BE CONTACTED FOR IMMEDIATE TELEPHONE CONTACT AND PROMPT VISITS WITH THE CHILD;

(IV) THE INFORMATION REQUIRED BY SUBDIVISION (A) OF SECTION ONE THOUSAND TWENTY-THREE OF THIS PART;

(V) THE RIGHT OF THE CUSTODIAN TO APPLY TO FAMILY COURT FOR THE RETURN OF THE CHILD PURSUANT TO SECTION ONE THOUSAND TWENTY-EIGHT OF THIS PART. SUCH NOTICE SHALL BE PERSONALLY SERVED UPON THE CUSTODIAN OR OTHER PERSON PRESENT AT THE RESIDENCE OF THE CHILD AT THE TIME OF REMOVAL OR, IF THE CUSTODIAN IS NOT PRESENT AT THAT TIME, A COPY OF THE NOTICE SHALL BE AFFIXED TO THE DOOR OF SUCH RESIDENCE AND A COPY SHALL BE MAILED TO SUCH PERSON AT HIS OR HER LAST KNOWN RESIDENCE WITHIN TWENTY-FOUR HOURS AFTER THE REMOVAL OF THE CHILD. IF THE PLACE OF REMOVAL IS NOT THE CHILD'S RESIDENCE, A COPY OF THE NOTICE SHALL BE PERSONALLY SERVED UPON THE CUSTODIAN FORTHWITH, OR AFFIXED TO THE DOOR OF THE CHILD'S RESIDENCE AND MAILED TO THE CUSTODIAN AT HIS OR HER LAST KNOWN PLACE OF RESIDENCE WITHIN TWENTY-FOUR HOURS AFTER THE REMOVAL. THE FORM OF THE NOTICE SHALL BE PRESCRIBED BY THE CHIEF ADMINISTRATOR OF THE COURTS. AN AFFIDAVIT OF SERVICE SHALL BE FILED WITH THE CLERK OF THE COURT WITHIN TWENTY-FOUR HOURS OF SERVING SUCH NOTICE, EXCLUSIVE OF WEEKENDS AND HOLIDAYS. FAILURE TO FILE THE AFFIDAVIT SHALL NOT RESULT IN THE RETURN OF THE CHILD, BUT THE COURT MAY LEVY A FINE FOR SUCH FAILURE IN A SUM NOT TO EXCEED ONE HUNDRED DOLLARS FOR EACH OCCURRENCE.

(E) WHENEVER A CHILD PROTECTIVE SERVICE REMOVES A CHILD AND THE CUSTODIAN OF THE CHILD IS NOT PRESENT, THE SERVICE SHALL IMMEDIATELY NOTIFY THE LOCAL POLICE STATION CLOSEST TO THE CHILD'S HOME OF SUCH REMOVAL, AND SHALL PROVIDE THEM WITH A COPY OF THE NOTICE REQUIRED PURSUANT TO SUBDIVISION (D) OF THIS SECTION. UPON REQUEST BY THE CUSTODIAN, THE POLICE SHALL PROVIDE SUCH PERSON WITH A COPY OF THE NOTICE.

S 1023. NOTICE. (A) A PERSON APPLYING FOR AN ORDER OF REMOVAL SHALL MAKE EVERY REASONABLE EFFORT TO INFORM THE CHILD'S PARENTS, THE CHILD'S CUSTODIAN, IF ANY, AND ANY ATTORNEY WHO HAS APPEARED FOR OR BEEN ASSIGNED TO REPRESENT A PARENT OR CUSTODIAN IN A PROCEEDING UNDER THIS ACT, OR WHO HAS BEEN RETAINED BY SUCH PERSON IF SUCH FACT IS KNOWN TO THE PERSON APPLYING FOR THE ORDER, OF THE INTENT TO APPLY FOR THE ORDER, OF THE DATE AND TIME THAT THE APPLICATION WILL BE MADE, THE ADDRESS OF THE COURT WHERE THE APPLICATION WILL BE MADE, AND OF THE RIGHT OF THE CUSTODIAN TO BE PRESENT AND TO BE REPRESENTED BY COUNSEL AT THE APPLICATION AND AT ANY HEARING HELD THEREON. IF THE PARENTS AND CUSTODIANS, IF ANY, OF THE CHILD ARE NOT PRESENT IN THE COURT WHEN THE APPLICATION FOR A REMOVAL ORDER IS MADE, THE COURT SHALL DESIGNATE AN APPROPRIATE PERSON TO MAKE EVERY REASONABLE EFFORT TO NOTIFY THE PARENTS AND CUSTODIAN. THE COURT MAY DESIGNATE THE TYPE OF EFFORTS WHICH SHALL BE MADE AND THE PERSON WHO SHALL MAKE SUCH EFFORTS.

(B) IF THE COURT DIRECTS THE REMOVAL OF A CHILD, AND THE PARENTS OR CUSTODIANS ARE NOT PRESENT IN THE COURT, THE COURT SHALL ISSUE A SUMMONS

PURSUANT TO SECTION ONE THOUSAND THIRTY-FIVE OF THIS ARTICLE, RETURNABLE WITHIN THREE COURT DAYS, AND SHALL ALSO DIRECT THE SERVICE OF THE SUMMONS, OF A NOTICE PURSUANT TO SUBDIVISION (D) OF SECTION ONE THOUSAND TWENTY-TWO OF THIS PART, AND THE PETITION, IF ANY, COINCIDENT WITH THE REMOVAL. AN AFFIDAVIT OF SERVICE SHALL BE FILED WITH THE CLERK OF THE COURT WITHIN TWENTY-FOUR HOURS OF SERVING SUCH NOTICE, EXCLUSIVE OF WEEKENDS AND HOLIDAYS. FAILURE TO SERVE THE SUMMONS OR FILE THE AFFIDAVIT SHALL NOT NECESSARILY RESULT IN THE DISMISSAL OF THE PETITION.

S 1024. CHILDREN TEMPORARILY REMOVED. IF A CHILD IS TEMPORARILY REMOVED OR DETAINED PURSUANT TO SECTION ONE THOUSAND TWENTY-TWO OF THIS PART, THE PERSON OR AGENCY REMOVING THE CHILD SHALL, UNLESS THE CHILD IS SOONER RETURNED TO THE CUSTODIAN, CONTACT THE LOCAL CHILD PROTECTIVE SERVICE AND TURN THE CHILD OVER TO SUCH SERVICE, WHICH SHALL:

(A) BRING THE CHILD IMMEDIATELY TO A PLACE APPROVED FOR SUCH PURPOSE BY THE LOCAL SOCIAL SERVICES DEPARTMENT OR TO A SUITABLE FAMILY MEMBER, UNLESS THE PERSON IS A PHYSICIAN TREATING THE CHILD AND THE CHILD IS OR WILL BE PRESENTLY ADMITTED TO A HOSPITAL;

(B) FILE AN APPLICATION FOR AN ORDER PURSUANT TO SECTION ONE THOUSAND TWENTY-FIVE OF THIS PART NO LATER THAN THE NEXT COURT DAY; AND

(C) PROVIDE THE NOTICE REQUIRED BY SUBDIVISION (D) OF SECTION ONE THOUSAND TWENTY-TWO OF THIS PART.

S 1025. PRELIMINARY HEARINGS. (A) A PERSON AUTHORIZED TO FILE A CHILD PROTECTIVE PETITION MAY APPLY, IN WRITING, TO THE FAMILY COURT FOR A PRELIMINARY HEARING TO REQUEST AN ORDER DIRECTING THE TEMPORARY REMOVAL OR REMAND OF A CHILD PURSUANT TO THIS PART, WHETHER OR NOT A PETITION HAS BEEN FILED, BY A VERIFIED APPLICATION ALLEGING THAT THE CHILD SUFFERS FROM ABUSE OR NEGLECT BY THE CHILD'S PARENT OR CUSTODIAN TO THE EXTENT THAT THE IMMEDIATE REMOVAL OF THE CHILD IS NECESSARY TO AVOID IMMINENT DANGER TO THE CHILD'S LIFE OR HEALTH. SUCH APPLICATION MAY BE CONTAINED IN A VERIFIED STATEMENT IN THE PETITION SETTING FORTH THE CIRCUMSTANCES WHICH CONSTITUTE IMMINENT DANGER.

(B) UPON THE FILING OF A PETITION UNDER THIS ARTICLE, THE COURT SHALL DETERMINE WHETHER OR NOT A PRELIMINARY HEARING IS NECESSARY TO PROTECT THE CHILD PENDING A FACT-FINDING HEARING. UPON FINDING THAT SUCH A HEARING IS NECESSARY, OR UPON THE APPLICATION OF ANY PARTY OR THE LAW GUARDIAN, OR IN ANY CASE IN WHICH A CHILD HAS BEEN REMOVED PURSUANT TO SECTION ONE THOUSAND TWENTY-TWO OF THIS PART, OR UPON THE FILING OF AN APPLICATION FOR A HEARING PURSUANT TO SUBDIVISION (A) OF THIS SECTION, THE COURT SHALL HOLD SUCH A HEARING AND SHALL INSURE THAT THE NOTICE REQUIRED BY SECTION ONE THOUSAND TWENTY-THREE OF THIS PART WAS PROVIDED.

(C) AT THE PRELIMINARY HEARING, THE COURT SHALL DETERMINE:

(I) WHETHER OR NOT THE CHILD IS IN IMMINENT DANGER IF THE CHILD REMAINS WITH OR RETURNS TO THE PARENT OR CUSTODIAN; AND, IF SO

(II) WHETHER OR NOT REASONABLE EFFORTS WERE MADE, PRIOR TO THE DATE OF THE APPLICATION FOR THE ORDER OF REMOVAL, TO PREVENT OR ELIMINATE THE NEED FOR REMOVAL OF THE CHILD FROM THE HOME; AND

(III) WHETHER THE CHILD WOULD BE IN IMMINENT DANGER IF SUCH SERVICES OR ASSISTANCE ARE DELAYED; AND, IF SO

(IV) WHETHER THE NEED TO REMOVE OR DETAIN THE CHILD MAY BE ELIMINATED BY THE REMOVAL OF A PERSON OR PERSONS FROM THE RESIDENCE OF THE CHILD.

(D) IF THE COURT FINDS THAT THE CHILD WOULD BE IN IMMINENT DANGER IF THE CHILD REMAINED IN OR RETURNED TO THE HOME, THE COURT SHALL ALSO DETERMINE WHETHER THERE IS A FAMILY MEMBER OR OTHER SUITABLE PERSON WHO IS ABLE AND WILLING TO PROVIDE ADEQUATE CARE FOR THE CHILD PENDING A FACT-FINDING HEARING, AND WHETHER REASONABLE EFFORTS WERE MADE TO LOCATE SUCH PERSONS.

(E) IF THE COURT ISSUES AN ORDER OF REMOVAL AND NO PETITION HAS BEEN FILED UNDER THIS PART, THE LOCAL CHILD PROTECTIVE AGENCY SHALL FILE A PETITION WITHIN THREE DAYS FROM THE ISSUING OF THE ORDER.

S 1026. IMMUNITY. ANY PERSON ACTING IN GOOD FAITH IN THE REMOVAL OR HOLDING OF A CHILD SHALL HAVE IMMUNITY FROM LIABILITY, CIVIL OR CRIMINAL, THAT MIGHT OTHERWISE BE INCURRED OR IMPOSED AS A RESULT OF SUCH REMOVAL OR HOLDING. ANY INSTITUTION ACTING IN GOOD FAITH AND IN COMPLIANCE WITH THE PROVISIONS OF THIS PART IN THE REMOVAL OR HOLDING OF A CHILD SHALL HAVE IMMUNITY FROM LIABILITY, CIVIL OR CRIMINAL, THAT MIGHT OTHERWISE BE INCURRED OR IMPOSED AS A RESULT OF SUCH REMOVAL OR HOLDING. FOR THE PURPOSES OF THIS SECTION, THE ACTIONS OF AN EMPLOYEE OF AN INSTITUTION SHALL BE PRESUMED TO BE IN ACCORDANCE WITH THE POLICIES OF THE AGENCY.

S 1027. ORDERS. (A) AN ORDER OF REMOVAL SHALL BE ISSUED ONLY UPON A HEARING HELD PURSUANT TO SECTION ONE THOUSAND TWENTY-FIVE OF THIS PART.

(B) IF THE COURT DETERMINES THAT REMOVAL OF THE CHILD IS NOT NECESSARY TO PREVENT IMMINENT DANGER TO THE CHILD, THE COURT SHALL, IF THE CHILD HAS BEEN REMOVED, RETURN OR PAROLE THE CHILD TO THE PARENT OR CUSTODIAN. THE COURT MAY IMPOSE SUCH CONDITIONS AS IT DETERMINES ARE NECESSARY TO AVOID IMMINENT DANGER TO THE CHILD.

(C) IF THE COURT DETERMINES THAT SERVICES OR ASSISTANCE TO THE CHILD OR THE CHILD'S FAMILY WILL PREVENT OR ELIMINATE THE NEED TO REMOVE THE CHILD FROM THE CHILD'S HOME, THE COURT SHALL ORDER THE CHILD PROTECTIVE AGENCY TO PROVIDE OR ARRANGE FORTHWITH FOR THE PROVISION OF SUCH SERVICES OR ASSISTANCE. THE COURT SHALL ALSO ORDER SERVICES OR ASSISTANCE WHERE THEY ARE NECESSARY TO ENABLE THE RETURN OF THE CHILD AT A LATER TIME.

(D) IF THE COURT DETERMINES THAT ORDERING THE REMOVAL OF A PERSON OR PERSONS FROM THE RESIDENCE OF THE CHILD WILL PREVENT OR ELIMINATE THE NEED FOR THE REMOVAL OF THE CHILD, THE COURT SHALL ISSUE A TEMPORARY ORDER OF PROTECTION PURSUANT TO SECTION ONE THOUSAND TWENTY-NINE OF THIS PART, DIRECTING THE REMOVAL OF SAID PERSON OR PERSONS FROM THE CHILD'S RESIDENCE.

(E) IF THE COURT DETERMINES THAT:

(I) REMOVAL OF THE CHILD IS NECESSARY TO AVOID IMMINENT DANGER TO THE CHILD; AND

(II) THE PROVISION OF SERVICES OR ASSISTANCE WILL NOT PREVENT OR ELIMINATE THE CURRENT NEED FOR SUCH REMOVAL; AND

(III) ORDERING THE REMOVAL OF A PERSON OR PERSONS FROM THE RESIDENCE OF THE CHILD WILL NOT ELIMINATE THE NEED FOR REMOVAL; THE COURT SHALL DIRECT THE REMOVAL OF THE CHILD FROM THE CHILD'S RESIDENCE.

(F) IF THE COURT ORDERS THE REMOVAL OF THE CHILD, AND DETERMINES THAT THERE IS A FAMILY MEMBER OR OTHER SUITABLE PERSON WHO IS ABLE AND WILLING TO PROVIDE ADEQUATE CARE FOR THE CHILD AND KEEP SIBLINGS TOGETHER PENDING A FACT-FINDING HEARING, THE COURT SHALL, IF THE PARENT OR CUSTODIAN CONSENTS, AND MAY, IF THE PARENT OR CUSTODIAN DOES NOT CONSENT, ORDER THE CHILD PAROLED TO SAID FAMILY MEMBER OR OTHER SUITABLE PERSON, OR REMANDED TO THE LOCAL DEPARTMENT OF SOCIAL SERVICES TO RESIDE WITH SUCH PERSON, UPON SUCH CONDITIONS AS IT DEEMS NECESSARY, INCLUDING SUPERVISION. IN ANY OTHER CASE, THE COURT SHALL PAROLE OR REMAND THE CHILD IN ACCORDANCE WITH SUBDIVISION (J) OF THIS SECTION AND SECTION ONE THOUSAND SEVENTEEN OF THIS ARTICLE. UNLESS THE COURT ORDERS OTHERWISE, THE PERSON TO WHOM THE CHILD IS PAROLED SHALL HAVE THE AUTHORITY TO OBTAIN ROUTINE AND EMERGENCY MEDICAL TREATMENT FOR THE CHILD AND ENROLL THE CHILD IN SCHOOL.

(G) IF THE COURT ORDERS THE REMOVAL OF A CHILD AND DETERMINES THAT IT IS NECESSARY TO TEMPORARILY REMAND THE CHILD, THE COURT SHALL SPECIFY THE LOCAL COMMISSIONER OF SOCIAL SERVICES OR OTHER FACILITY TO WHICH THE CHILD IS TO BE BROUGHT. THE COURT MAY ORDER THE LOCAL COMMISSIONER OF SOCIAL SERVICES OR OTHER FACILITY TO HAVE THE CHILD RESIDE WITH A SPECIFIC PERSON OR PERSONS WHO HAVE BEEN CERTIFIED OR APPROVED, UPON SUCH CONDITIONS, INCLUDING SUPERVISION, AS IT DEEMS NECESSARY.

(H) IF THE COURT ORDERS THE REMOVAL OF A CHILD AND DETERMINES THAT REASONABLE EFFORTS WERE NOT MADE TO LOCATE A FAMILY MEMBER OR OTHER SUITABLE PERSON, THE COURT SHALL ORDER THE CHILD PROTECTIVE AGENCY TO MAKE SUCH EFFORTS FORTHWITH.

(I) WHEN THE COURT ORDERS THE REMOVAL OF A CHILD, THE COURT SHALL ORDER PROMPT, REASONABLE AND REGULAR VISITATION PURSUANT TO SECTION ONE THOUSAND THIRTY OF THIS PART.

(J) WHEN A SOCIAL SERVICES OFFICIAL REMOVES A CHILD PURSUANT TO THIS PART, SUCH OFFICIAL SHALL PLACE SUCH CHILD WITH HIS OR HER MINOR SIBLINGS OR HALF-SIBLINGS WHO HAVE BEEN OR ARE BEING REMANDED TO OR PLACED IN THE CARE AND CUSTODY OF SUCH OFFICIAL UNLESS, IN THE JUDGMENT OF SUCH OFFICIAL, SUCH PLACEMENT IS CONTRARY TO THE BEST INTERESTS OF THE CHILDREN. PLACEMENT WITH SIBLINGS OR HALF-SIBLINGS SHALL BE PRESUMPTIVELY IN THE CHILD'S BEST INTERESTS UNLESS SUCH PLACEMENT WOULD BE CONTRARY TO THE CHILD'S HEALTH, SAFETY, OR WELFARE. IF SUCH PLACEMENT IS NOT IMMEDIATELY AVAILABLE AT THE TIME OF THE REMOVAL OF THE CHILD, SUCH OFFICIAL SHALL PROVIDE OR ARRANGE FOR THE PROVISION OF SUCH PLACEMENT WITHIN THIRTY DAYS.

(K) NOTHING IN THIS PART SHALL BE DEEMED TO REQUIRE THAT THE COURT ORDER THE TEMPORARY REMOVAL OF A CHILD AS A CONDITION OF ORDERING SERVICES OR ASSISTANCE.

(L) IF THE COURT DIRECTS REMOVAL OF A CHILD AND THE PARENT OR CUSTODIAN OF THE CHILD WAS NOT PRESENT AT THE COURT AT THE TIME THE REMOVAL WAS ORDERED, THE ORDER OF REMOVAL SHALL BE EFFECTIVE UNTIL THE RETURN DATE OF THE SUMMONS. THE SUMMONS AND PETITION, TOGETHER WITH THE NOTICE REQUIRED BY SUBDIVISION (D) OF SECTION ONE THOUSAND TWENTY-TWO OF THIS PART, SHALL BE SERVED UPON SUCH CUSTODIAN COINCIDENT WITH THE REMOVAL. IF THE CUSTODIAN IS NOT PRESENT WHEN THE CHILD IS REMOVED, SERVICE OF THE SUMMONS AND PETITION SHALL BE GOVERNED BY SECTION ONE THOUSAND THIRTY-SIX OF THIS ARTICLE.

(M) IN ALL CASES INVOLVING ABUSE THE COURT SHALL ORDER, AND IN ALL CASES INVOLVING NEGLECT THE COURT MAY ORDER, AN EXAMINATION OF THE CHILD PURSUANT TO SECTION TWO HUNDRED FIFTY-ONE OF THIS ACT OR BY A PHYSICIAN APPOINTED OR DESIGNATED FOR THE PURPOSE BY THE COURT. AS PART OF SUCH EXAMINATION, THE PHYSICIAN SHALL ARRANGE TO HAVE COLORED PHOTOGRAPHS TAKEN AS SOON AS PRACTICAL OF THE AREAS OF TRAUMA VISIBLE ON SUCH CHILD AND MAY, IF INDICATED, ARRANGE TO HAVE A RADIOLOGICAL EXAMINATION PERFORMED ON THE CHILD. THE PHYSICIAN, ON THE COMPLETION OF SUCH EXAMINATION, SHALL FORWARD THE RESULTS THEREOF TOGETHER WITH THE COLOR PHOTOGRAPHS TO THE COURT ORDERING SUCH EXAMINATION. THE COURT MAY DISPENSE WITH SUCH EXAMINATION IN THOSE CASES WHICH WERE COMMENCED ON THE BASIS OF A PHYSICAL EXAMINATION BY A PHYSICIAN. UNLESS COLORED PHOTOGRAPHS HAVE ALREADY BEEN TAKEN OR UNLESS THERE ARE NO AREAS OF VISIBLE TRAUMA, THE COURT SHALL ARRANGE TO HAVE COLORED PHOTOGRAPHS TAKEN EVEN IF THE EXAMINATION IS DISPENSED WITH.

(N) THE COURT SHALL STATE THE GROUNDS FOR ANY DECISIONS AND ORDERS ISSUED PURSUANT TO THIS SECTION, AND SHALL LIST THE REASONABLE EFFORTS WHICH IT FOUND WERE MADE TO AVOID REMOVAL AND TO LOCATE FAMILY MEMBERS.

S 1028. APPLICATION TO RETURN CHILD TEMPORARILY REMOVED. UPON THE APPLICATION OF THE PARENT, CUSTODIAN, OR LAW GUARDIAN OF A CHILD TEMPORARILY REMOVED UNDER THIS PART, WHETHER OR NOT A PETITION HAS BEEN FILED, THE COURT SHALL HOLD A HEARING TO DETERMINE WHETHER THE CHILD SHOULD BE RETURNED (A) IF THERE HAS NOT BEEN A HEARING ON THE REMOVAL OF THE CHILD AT WHICH THE PARENT OR OTHER PERSON LEGALLY RESPONSIBLE WAS PRESENT AND HAD THE OPPORTUNITY TO BE REPRESENTED BY COUNSEL OR HAD AN ADEQUATE OPPORTUNITY TO BE PRESENT, OR (B) UPON GOOD CAUSE SHOWN. A HEARING UNDER SUBDIVISION (A) OF THIS SECTION SHALL BE HELD WITHIN THREE COURT DAYS OF THE APPLICATION AND SHALL NOT BE ADJOURNED WITHOUT THE CONSENT OF THE CUSTODIAN. UPON SUCH HEARING, THE COURT SHALL GRANT THE APPLICATION, UNLESS IT FINDS THAT THE RETURN PRESENTS AN IMMINENT RISK TO THE CHILD'S LIFE OR HEALTH. IF A PARENT OR OTHER PERSON LEGALLY RESPONSIBLE FOR THE CARE OF A CHILD WAIVES HIS OR HER RIGHT TO A HEARING UNDER THIS SECTION, THE COURT SHALL ADVISE SUCH PERSON AT THAT TIME THAT, NOTWITHSTANDING SUCH WAIVER, AN APPLICATION UNDER THIS SECTION MAY BE MADE AT ANY TIME DURING THE PENDENCY OF THE PROCEEDINGS.

S 1029. TEMPORARY ORDER OF PROTECTION. (A) THE FAMILY COURT, UPON THE APPLICATION OF ANY PERSON WHO MAY ORIGINATE A PROCEEDING UNDER THIS ARTICLE, OR ANY PARTY OR THE LAW GUARDIAN, FOR GOOD CAUSE SHOWN, MAY ISSUE A TEMPORARY ORDER OF PROTECTION, BEFORE OR AFTER THE FILING OF SUCH PETITION, WHICH MAY CONTAIN ANY OF THE PROVISIONS AUTHORIZED ON THE MAKING OF AN ORDER OF PROTECTION UNDER SECTION ONE THOUSAND FIFTY-SIX OF THIS ARTICLE. IF SUCH ORDER IS GRANTED BEFORE THE FILING OF A PETITION AND A PETITION IS NOT FILED UNDER THIS SECTION WITHIN TEN DAYS FROM THE GRANTING OF SUCH ORDER, THE ORDER SHALL BE VACATED.

(B) A TEMPORARY ORDER OF PROTECTION IS NOT A FINDING OF WRONGDOING.

(C) THE COURT MAY ISSUE OR EXTEND A TEMPORARY ORDER OF PROTECTION EX PARTE OR ON NOTICE SIMULTANEOUSLY WITH THE ISSUANCE OF A WARRANT DIRECTING THAT THE RESPONDENT BE ARRESTED AND BROUGHT BEFORE THE COURT PURSUANT TO SECTION ONE THOUSAND THIRTY-SEVEN OF THIS ARTICLE.

(D) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AUTHORIZE THE COURT TO AWARD PERMANENT CUSTODY OF A CHILD TO A PARENT OR RELATIVE PURSUANT TO A TEMPORARY ORDER OF PROTECTION OR LIMIT ANY POWER SET FORTH IN ANY OTHER SECTION OF THIS PART.

S 1030. ORDER OF VISITATION BY A RESPONDENT. (A) A RESPONDENT SHALL HAVE THE RIGHT TO REASONABLE AND REGULARLY SCHEDULED VISITATION WITH A CHILD IN THE TEMPORARY CUSTODY OF A SOCIAL SERVICES OFFICIAL PURSUANT TO THIS PART OR PURSUANT TO SUBDIVISION (D) OF SECTION ONE THOUSAND FIFTY-ONE OF THIS ARTICLE, UNLESS LIMITED BY AN ORDER OF THE FAMILY COURT.

(B) A RESPONDENT WHO HAS NOT BEEN AFFORDED SUCH VISITATION MAY APPLY TO THE COURT FOR AN ORDER REQUIRING THE LOCAL SOCIAL SERVICES OFFICIAL HAVING TEMPORARY CUSTODY OF THE CHILD PURSUANT TO THIS PART OR PURSUANT TO SUBDIVISION (D) OF SECTION ONE THOUSAND FIFTY-ONE OF THIS ARTICLE, TO PERMIT THE RESPONDENT TO VISIT THE CHILD AT STATED PERIODS. SUCH APPLICATION SHALL BE MADE UPON NOTICE TO THE LOCAL SOCIAL SERVICES OFFICIAL AND TO ANY LAW GUARDIAN APPOINTED TO REPRESENT THE CHILD, WHO SHALL BE AFFORDED AN OPPORTUNITY TO BE HEARD THEREON.

(C) A RESPONDENT SHALL BE GRANTED REASONABLE AND REGULARLY SCHEDULED VISITATION UNLESS THE COURT FINDS THAT THE CHILD'S LIFE OR HEALTH WOULD BE ENDANGERED THEREBY, BUT THE COURT MAY ORDER VISITATION UNDER THE SUPERVISION OF AN EMPLOYEE OF A LOCAL SOCIAL SERVICES DEPARTMENT UPON A FINDING THAT SUCH SUPERVISED VISITATION IS IN THE BEST INTEREST OF THE CHILD.

(D) AN ORDER MADE UNDER THIS SECTION MAY BE MODIFIED BY THE COURT FOR GOOD CAUSE SHOWN, UPON APPLICATION BY ANY PARTY OR THE CHILD'S LAW GUAR-

DIAN, AND UPON NOTICE OF SUCH APPLICATION TO ALL OTHER PARTIES AND THE CHILD'S LAW GUARDIAN, WHO SHALL BE AFFORDED AN OPPORTUNITY TO BE HEARD THEREON.

(E) AN ORDER MADE UNDER THIS SECTION SHALL TERMINATE UPON THE ENTRY OF AN ORDER OF DISPOSITION PURSUANT TO PART FIVE OF THIS ARTICLE.

S 3. Subdivisions (a) and (e) of section 1031 of the family court act, subdivision (a) as added by chapter 962 of the laws of 1970 and subdivision (e) as added by chapter 171 of the laws of 1990, are amended to read as follows:

(a) A proceeding under this article is originated by the filing of a petition [in which] ALLEGING (I) facts sufficient to establish that a child is an abused or neglected child under this article [are alleged] AND (II) THE PREVENTIVE SERVICES WHICH WERE OFFERED TO THE RESPONDENT, THAT SUCH SERVICES WERE APPROPRIATE, AND THE REASON WHY SUCH SERVICES WERE INEFFECTIVE. A RESPONDENT MAY, BY WRITTEN DEMAND ON EIGHT DAYS NOTICE, REQUIRE THE PETITIONER TO ESTABLISH THE ALLEGATIONS BY AFFIDAVIT OF A WITNESS WHOSE TESTIMONY WOULD BE ADMISSIBLE AT A FACT-FINDING HEARING UNDER THIS ARTICLE.

(e) In any case where a child has been removed [prior to the filing of a petition] WITHOUT COURT ORDER, the petition alleging abuse or neglect of said child shall state the date and time of the removal, the SPECIFIC FACTS CONSTITUTING THE circumstances necessitating such removal, [whether the removal occurred pursuant to section ten hundred twenty-one, ten hundred twenty-two or ten hundred twenty-four of this act, and if the removal occurred without court order,] the [reason] SPECIFIC FACTS SHOWING THAT there was not sufficient time to obtain a court order pursuant to section [ten hundred] ONE THOUSAND twenty-two of this act.

S 4. Section 417 of the social services law is REPEALED.

S 5. Section 419 of the social services law, as amended by chapter 12 of the laws of 1996, is amended to read as follows:

S 419. Immunity from liability. Any person, official, or institution participating in good faith in the providing of a service pursuant to section four hundred twenty-four of this title, the making of a report, the taking of photographs[, the removal or keeping of a child pursuant to this title], or the disclosure of child protective services information in compliance with sections twenty, four hundred twenty-two and four hundred twenty-two-a of this chapter shall have immunity from any liability, civil or criminal, that might otherwise result by reason of such actions. For the purpose of any proceeding, civil or criminal, the good faith of any such person, official, or institution required to report cases of child abuse or maltreatment or providing a service pursuant to section four hundred twenty-four or the disclosure of child protective services information in compliance with sections twenty, four hundred twenty-two and four hundred twenty-two-a of this chapter shall be presumed, provided such person, official or institution was acting in discharge of their duties and within the scope of their employment, and that such liability did not result from the willful misconduct or gross negligence of such person, official or institution.

S 6. Section 383-b of the social services law, as amended by chapter 570 of the laws of 1986, is amended to read as follows:

S 383-b. Medical treatment for abused or neglected children; consent of commissioners. The local commissioner of social services or the local commissioner of health may give effective consent for medical, dental, health and hospital services for any child who has been found by the family court to be an abused child or a neglected child, or who has been taken into or kept in protective custody or removed from the place

where he OR SHE is residing, or who has been placed in the custody of such commissioner, pursuant to [section four hundred seventeen of this chapter or] section one thousand twenty-two, section one thousand twenty-four or section one thousand twenty-seven of the family court act.

S 7. This act shall take effect on the one hundred twentieth day after it shall have become a law.