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

5508

2009-2010 Regular Sessions

I N A S S E M B L Y

February 13, 2009

Introduced by M. of A. ERRIGO, BUTLER, FINCH, McDONOUGH, WALKER -- Multi-Sponsored by -- M. of A. CALHOUN -- read once and referred to the Committee on Children and Families

AN ACT to amend the family court act, in relation to preliminary orders directing the temporary removal of a child and in relation to emergency removal of a child without court order

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

Section 1. Subdivisions (a) and (c) of section 1022 of the family court act, subdivision (a) as amended by section 13 of part A of chapter 3 of the laws of 2005 and subdivision (c) as amended by chapter 776 of the laws of 1987, are amended to read as follows:

(a) (i) The family court may enter an order directing the temporary removal of a child from the place where he or she is residing before the filing of a petition under this article, [if (A) the parent or other person legally responsible for the child's care is absent or, though present, was asked and refused to consent to the temporary removal of the child and was informed of an intent to apply for an order under this section and of the information required by section one thousand twenty-three of this part; and

(B) the child appears so to suffer from the abuse or neglect of his or her parent or other person legally responsible for his or her care that his or her immediate removal is necessary to avoid imminent danger to the child's life or health; and

(C) there is not enough time to file a petition and hold a preliminary hearing under section one thousand twenty-seven of this part] ONLY WHERE THERE IS CLEAR AND CONVINCING EVIDENCE THAT THERE IS IMMINENT RISK TO THE CHILD'S LIFE, HEALTH OR WELFARE, OR THE CHILD MAY BE SUBJECT TO SEXUAL ABUSE.

(ii) When a child protective agency applies to a court for the immediate removal of a child pursuant to this subdivision, the court shall calendar the matter for that day and shall continue the matter on successive subsequent court days, if necessary, until a decision is made by the court.

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

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(iii) In determining whether temporary removal of the child is necessary to avoid imminent risk to the child's life or health, the court shall consider and determine in its order whether continuation in the child's home would be contrary to the best interests of the child and where appropriate, whether reasonable efforts were made prior to the date of application for the order directing such temporary removal to prevent or eliminate the need for removal of the child from the home. If the court determines that reasonable efforts to prevent or eliminate the need for removal of the child from the home were not made but that the lack of such efforts was appropriate under the circumstances, the court order shall include such a finding.

(iv) If the court determines that reasonable efforts to prevent or eliminate the need for removal of the child from the home were not made but that such efforts were appropriate under the circumstances, the court shall order the child protective agency to provide or arrange for the provision of appropriate services or assistance to the child and the child's family pursuant to section one thousand fifteen-a of this article or subdivision (c) of this section.

(v) The court shall also consider and determine whether imminent risk to the child would be eliminated by the issuance of a temporary order of protection, pursuant to section one thousand twenty-nine of this part, directing the removal of a person or persons from the child's residence.

(vi) Any order directing the temporary removal of a child pursuant to this section shall state the court's findings with respect to the necessity of such removal, whether the respondent was present at the hearing and, if not, what notice the respondent was given of the hearing, whether the respondent was represented by counsel, and, if not, whether the respondent waived his or her right to counsel.

(vii) At the conclusion of a hearing where it has been determined that a child should be removed from his or her parent or other person legally responsible, the court shall set the date certain for an initial permanency hearing pursuant to paragraph two of subdivision (a) of section one thousand eighty-nine of this act. The date certain shall be included in the written order issued pursuant to subdivision (b) of this section and shall set forth the date certain scheduled for the permanency hearing.

(c) The family court, before the filing of a petition under this article, may enter an order authorizing the provision of services or assistance, including authorizing a physician or hospital to provide emergency medical or surgical procedures, if (i) such procedures are necessary to safeguard the life [or health] of the child; and

(ii) there is not enough time to file a petition and hold a preliminary hearing under section one thousand twenty-seven. Where the court orders a social services official to provide or contract for services or assistance pursuant to this section, such order shall be limited to services or assistance authorized or required to be made available pursuant to the comprehensive annual services program plan then in effect.

S 2. Subdivision (a) of section 1024 of the family court act, as amended by chapter 677 of the laws of 1985, is amended to read as follows:

(a) A peace officer, acting pursuant to his special duties, police officer, or a law enforcement official, or 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 shall take all necessary measures to protect a child's life [or health] including, when appropriate, taking or keeping a child in protective custody, and

any physician shall notify the local department of social services or appropriate police authorities to take custody of any child such physician is treating, without an order under section one thousand twenty-two and without the consent of the parent or other person legally responsible for the child's care, regardless of whether the parent or other person legally responsible for the child's care is absent, if (i) such person has reasonable cause to believe that the child is in such circumstance or condition that his continuing in said place of residence or in the care and custody of the parent or person legally responsible for the child's care presents an imminent danger to the child's life or [health] WHERE THERE IS CLEAR AND CONVINCING EVIDENCE THAT THERE IS IMMINENT RISK TO THE CHILD'S LIFE, HEALTH OR WELFARE, OR THE CHILD MAY BE SUBJECT TO SEXUAL ABUSE; and

(ii) there is not time enough to apply for an order under section one thousand twenty-two.

S 3. The opening paragraph of paragraph (i) of subdivision (b) of section 1027 of the family court act, as amended by chapter 671 of the laws of 2005, is amended to read as follows:

Upon such hearing, if the court finds CLEAR AND CONVINCING EVIDENCE that removal is necessary to avoid imminent risk to the child's life or health, it shall remove or continue the removal of the child. If the court makes such a determination that removal is necessary, the court shall immediately inquire as to the status of any efforts made by the local social services district to locate relatives of the child, including any non-respondent parent and all of the child's grandparents, as required pursuant to section one thousand seventeen of this article. The court shall also inquire as to whether the child, if over the age of five, has identified any relatives who play or have played a significant positive role in his or her life and whether any respondent parent or any non-respondent parent has identified any suitable relatives. Such inquiry shall include whether any relative who has been located has expressed an interest in becoming a foster parent for the child or in seeking custody or care of the child. Upon completion of such inquiry, the court shall remand or place the child:

S 4. Subdivision (a) of section 1028 of the family court act, as amended by chapter 36 of the laws of 1994, is amended to read as follows:

(a) Upon the application of the parent or other person legally responsible for the care of a child temporarily removed under this part or upon the application of the law guardian for an order returning the child, the court shall hold a hearing to determine whether the child should be returned (i) unless there has been a hearing pursuant to section [ten hundred] ONE THOUSAND twenty-seven of this article 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 (ii) upon good cause shown. Except for good cause shown, such hearing shall be held within three court days of the application and shall not be adjourned. Upon such hearing, the court shall grant the application, unless it finds CLEAR AND CONVINCING EVIDENCE 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 5. Paragraph (i) of subdivision (b) of section 1046 of the family court act, as amended by chapter 7 of the laws of 1999, is amended to read as follows:

(i) any determination that the child is an abused or neglected child must be based on [a preponderance of] CLEAR AND CONVINCING evidence;

S 6. Subdivision (a) of section 1051 of the family court act, as amended by chapter 160 of the laws of 1987, is amended to read as follows:

(a) If facts sufficient to sustain the petition are established BY CLEAR AND CONVINCING EVIDENCE in accord with part four of this article, or if all parties and the law guardian consent, the court shall, subject to the provisions of subdivision (c) of this section, enter an order finding that the child is an abused child or a neglected child and shall state the grounds for the finding.

S 7. Subdivision (d) of section 1051 of the family court act, as amended by chapter 478 of the laws of 1988, is amended to read as follows:

(d) If the court makes a finding of abuse or neglect, it shall determine, based upon the facts adduced during the fact-finding hearing and any other additional facts presented to it, whether a preliminary order pursuant to section one thousand twenty-seven is required to protect the child's interests pending a final order of disposition. The court shall state the grounds for its determination. In addition, a child found to be abused or neglected may be removed and remanded to a place approved for such purpose by the local social services department or be placed in the custody of a suitable person, pending a final order of disposition, if the court finds that there is a substantial probability that the final order of disposition will be an order of placement under section one thousand fifty-five AND IF THE COURT FINDS THAT THERE IS CLEAR AND CONVINCING EVIDENCE OF AN IMMINENT RISK TO THE CHILD'S LIFE, HEALTH OR WELFARE OR WHERE THE CHILD MAY BE SUBJECT TO SEXUAL ABUSE. In determining whether substantial probability exists, the court shall consider the requirements of subdivision (b) of section one thousand fifty-two.

S 8. The opening paragraph of paragraph (i) of subdivision (b) of section 1052 of the family court act, as amended by chapter 538 of the laws of 1992, is amended to read as follows:

The order of the court shall state the grounds for any disposition made under this section. If the court places the child in accord with section one thousand fifty-five of this part, the court in its order, UPON PROOF BY CLEAR AND CONVINCING EVIDENCE THAT THERE IS AN IMMINENT RISK TO THE CHILD'S LIFE, HEALTH OR WELFARE OR THE CHILD MAY BE SUBJECT TO SEXUAL ABUSE, shall determine:

S 9. Subdivision (a) of section 1055 of the family court act, as amended by chapter 12 of the laws of 2006, is amended to read as follows:

(a) For purposes of section one thousand fifty-two of this part the court may place the child in the custody of a relative or other suitable person, or of the [local] commissioner of [social services] THE OFFICE OF CHILDREN AND FAMILY SERVICES or of such other officer, board or department as may be authorized to receive children as public charges, or a duly authorized association, agency, society or in an institution suitable for the placement of a child ONLY WHERE THERE IS CLEAR AND CONVINCING EVIDENCE THAT THERE IS AN IMMINENT RISK TO THE CHILD'S LIFE, HEALTH OR WELFARE OR THE CHILD MAY BE SUBJECT TO SEXUAL ABUSE IF SUCH CHILD IS RETURNED TO HIS OR HER PARENT OR ANY OTHER PERSON LEGALLY RESPONSIBLE FOR HIM OR HER. The court may also place the child in the

custody of the [local] commissioner of [social services] THE OFFICE OF CHILDREN AND FAMILY SERVICES and may direct such commissioner to have the child reside with a relative or other suitable person who has indicated a desire to become a foster parent for the child and further direct such commissioner, pursuant to regulations of [the] SUCH office [of children and family services], to commence an investigation of the home of such relative or other suitable person within twenty-four hours and thereafter expedite approval or certification of such relative or other suitable person, if qualified, as a foster parent. If such home is found to be unqualified for approval or certification, the [local] commissioner shall report such fact to the court forthwith so that the court may make a placement determination that is in the best interests of the child.

S 10. Subdivision (a) of section 1055 of the family court act, as amended by chapter 519 of the laws of 2008, is amended to read as follows:

(a) (i) For purposes of section one thousand fifty-two of this part the court may place the child in the custody of a relative or other suitable person pursuant to this article, or of the [local] commissioner of [social services] THE OFFICE OF CHILDREN AND FAMILY SERVICES or of such other officer, board or department as may be authorized to receive children as public charges, or a duly authorized association, agency, society or in an institution suitable for the placement of a child ONLY WHERE THERE IS CLEAR AND CONVINCING EVIDENCE THAT THERE IS AN IMMINENT RISK TO THE CHILD'S LIFE, HEALTH OR WELFARE OR THE CHILD MAY BE SUBJECT TO SEXUAL ABUSE IF SUCH CHILD IS RETURNED TO HIS OR HER PARENT OR ANY OTHER PERSON LEGALLY RESPONSIBLE FOR HIM OR HER. The court may also place the child in the custody of the [local] commissioner of [social services] THE OFFICE OF CHILDREN AND FAMILY SERVICES and may direct such commissioner to have the child reside with a relative or other suitable person who has indicated a desire to become a foster parent for the child and further direct such commissioner, pursuant to regulations of [the] SUCH office [of children and family services], to commence an investigation of the home of such relative or other suitable person within twenty-four hours and thereafter expedite approval or certification of such relative or other suitable person, if qualified, as a foster parent. If such home is found to be unqualified for approval or certification, the [local] commissioner shall report such fact to the court forthwith so that the court may make a placement determination that is in the best interests of the child.

(ii) An order placing a child directly with a relative or other suitable person pursuant to this part may not be granted unless the relative or other suitable person consents to the jurisdiction of the court. The court may place the person with whom the child has been directly placed under supervision of a child protective agency, social services official or duly authorized agency during the pendency of the proceeding. The court also may issue an order of protection under section one thousand fifty-six of this part. An order of supervision issued pursuant to this subdivision shall set forth the terms and conditions that the relative or suitable person must meet and the actions that the child protective agency, social services official or duly authorized agency must take to exercise such supervision.

S 11. This act shall take effect immediately; provided that the amendments to subdivision (a) of section 1055 of the family court act made by section 10 of this act shall take effect on the same date as section 4 of chapter 519 of the laws of 2008, takes effect.