

8223

2009-2010 Regular Sessions

I N A S S E M B L Y

May 11, 2009

Introduced by M. of A. TITUS, SCARBOROUGH, CASTRO, COOK, ESPAILLAT, JAFFEE, PERRY, REILLY, ROSENTHAL, STIRPE, ROBINSON -- Multi-Sponsored by -- M. of A. BARRON, EDDINGTON, JOHN, McENENY, MENG, NOLAN, TOWNS, WEISENBERG -- (at request of the Office of Children and Family Services) -- read once and referred to the Committee on Children and Families

AN ACT to amend the social services law and the family court act, in relation to permanency for destitute children, reinstatement of parental relationships and enhancement of supervised independent living programs; and to repeal certain provisions of the social services law relating thereto

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

1 Section 1. Subdivision 3 of section 371 of the social services law, as
2 amended by chapter 722 of the laws of 1978, is amended to read as
3 follows:
4 3. "Destitute child" means a child who[, through no neglect on the
5 part of its parent, guardian or custodian, is
6 (a) destitute or homeless, or
7 (b)] IS NOT SUBJECT TO ARTICLE TEN OF THE FAMILY COURT ACT; IS UNAC-
8 COMPANIED BY A PARENT OR OTHER LEGALLY RESPONSIBLE ADULT; AND IS EITHER
9 in a state of want or suffering due to lack of sufficient food, cloth-
10 ing, [or] shelter, or medical or surgical care, or
11 [(c) a person under the age of eighteen years who is absent from his
12 legal residence without the consent of his parent, legal guardian or
13 custodian, or
14 (d) a person under the age of eighteen who] is without a place of
15 shelter where APPROPRIATE supervision and care are available.
16 S 2. Subdivision 3 of section 374-b of the social services law, as
17 added by chapter 160 of the laws of 2004, is amended to read as follows:

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

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1 3. An authorized agency that has received approval from the office of
2 children and family services may operate a supervised independent living
3 program, as defined in section three hundred seventy-one of this title.
4 The office of children and family services shall promulgate regulations
5 establishing the standards for approval and operation of supervised
6 independent living programs. AN AUTHORIZED AGENCY SHALL NOT BE REQUIRED
7 TO NOTIFY THE MUNICIPALITY IN ACCORDANCE WITH SUBDIVISION TWO OF THIS
8 SECTION WHEN ESTABLISHING A SUPERVISED INDEPENDENT LIVING PROGRAM OR A
9 SUPERVISED INDEPENDENT LIVING UNIT.

10 S 3. The section heading of section 384-b of the social services law,
11 as added by chapter 666 of the laws of 1976, is amended to read as
12 follows:

13 Guardianship and custody of destitute or dependent children; commit-
14 ment by court order; VACATUR OF COMMITMENT.

15 S 4. Section 384-b of the social services law is amended by adding a
16 new subdivision 13 to read as follows:

17 13. A PETITION TO VACATE AN ORDER OF DISPOSITION COMMITTING THE GUAR-
18 DIANSHIP AND CUSTODY OF A CHILD WHOSE PARENTAL RIGHTS HAVE BEEN TERMI-
19 NATED MAY BE BROUGHT IN ACCORDANCE WITH PART ONE-A OF ARTICLE SIX OF THE
20 FAMILY COURT ACT.

21 S 5. The social services law is amended by adding a new section 384-d
22 to read as follows:

23 S 384-D. CARE AND CUSTODY OF DESTITUTE CHILDREN. 1. INITIATION OF
24 JUDICIAL PROCEEDING. A SOCIAL SERVICES COMMISSIONER SHALL, WITHIN FOUR-
25 TEEN DAYS OF ACCEPTING THE CARE AS A PUBLIC CHARGE OF A CHILD WHO
26 APPEARS TO BE A DESTITUTE CHILD, FILE A PETITION IN THE FAMILY COURT
27 ALLEGING THAT THE CHILD IS A DESTITUTE CHILD AND REQUESTING THAT THE
28 COURT PLACE THE CHILD IN THE TEMPORARY CARE AND CUSTODY OF SUCH COMMIS-
29 SIONER WHILE AN INVESTIGATION IS COMMENCED TO DETERMINE WHETHER THE
30 CHILD IS AN ABUSED OR NEGLECTED CHILD SUBJECT TO THE PROVISIONS OF ARTI-
31 CLE TEN OF THE FAMILY COURT ACT OR A DESTITUTE CHILD AS DEFINED IN
32 SUBDIVISION THREE OF SECTION THREE HUNDRED SEVENTY-ONE OF THIS TITLE.

33 2. CONTENTS OF PETITION. THE PETITION SHALL ALLEGE THE BASIS FOR THE
34 BELIEF THAT THE CHILD IS A DESTITUTE CHILD; WHETHER THE WHEREABOUTS OF
35 THE PARENT, PARENTS, GUARDIAN, OR OTHER PERSON LEGALLY RESPONSIBLE ARE
36 KNOWN, AND IF SO, THE ALLEGED ADDRESS OF THAT PERSON, ANY OTHER KNOWN
37 PERSONS LEGALLY RESPONSIBLE FOR THE CHILD, AND ANY OTHER RELATIVES OF
38 THE CHILD. THE PETITION SHALL CONTAIN A NOTICE IN CONSPICUOUS PRINT
39 PROVIDING THAT IF THE CHILD REMAINS IN FOSTER CARE FOR FIFTEEN OF THE
40 TWENTY-TWO MONTHS THAT FOLLOW, THE AGENCY MAY BE REQUIRED BY LAW TO FILE
41 A PETITION TO TERMINATE PARENTAL RIGHTS. THE PETITION SHALL ALSO SET
42 FORTH THE EFFORTS THAT WERE MADE, PRIOR TO THE PLACEMENT OF THE CHILD
43 INTO FOSTER CARE, TO PREVENT REMOVAL OF THE CHILD FROM HIS OR HER HOME
44 AND THE EFFORTS WHICH WERE MADE, PRIOR TO THE FILING OF THE PETITION, TO
45 MAKE IT POSSIBLE FOR THE CHILD TO RETURN SAFELY HOME. IF SUCH EFFORTS
46 WERE NOT MADE, THE PETITION SHALL SET FORTH THE REASONS WHY THESE
47 EFFORTS WERE NOT MADE. THE PETITION SHALL REQUEST THAT A TEMPORARY ORDER
48 BE MADE TRANSFERRING THE CARE AND CUSTODY OF THE CHILD TO THE SOCIAL
49 SERVICES OFFICIAL.

50 3. INITIAL APPEARANCE. AT THE INITIAL APPEARANCE:

51 (A) THE COURT SHALL APPOINT A LAW GUARDIAN TO REPRESENT THE CHILD; AND

52 (B) THE COURT SHALL DETERMINE WHETHER PLACEMENT OF THE CHILD IN TEMPO-
53 RARY CARE AND CUSTODY OF THE LOCAL COMMISSIONER IS IN THE BEST INTERESTS
54 OF THE CHILD; WHETHER IT WOULD BE CONTRARY TO THE WELFARE OF THE CHILD
55 TO CONTINUE IN HIS OR HER OWN HOME; THAT, WHERE APPROPRIATE, REASONABLE
56 EFFORTS WERE MADE PRIOR TO THE PLACEMENT OF THE CHILD INTO FOSTER CARE

1 TO PREVENT REMOVAL OF THE CHILD FROM HIS OR HER HOME; AND THAT PRIOR TO
2 THE INITIATION OF THE COURT PROCEEDING REQUIRED TO BE HELD BY THIS
3 SUBDIVISION, REASONABLE EFFORTS WERE MADE TO MAKE IT POSSIBLE FOR THE
4 CHILD TO RETURN SAFELY HOME. THE COURT SHALL INCLUDE SUCH FINDINGS IN
5 ITS ORDER. IF THE COURT DETERMINES THAT REASONABLE EFFORTS TO PREVENT
6 THE NEED FOR REMOVAL OF THE CHILD FROM THE HOME WERE NOT MADE BUT THAT
7 THE LACK OF SUCH EFFORTS WAS APPROPRIATE UNDER THE CIRCUMSTANCES, THE
8 COURT ORDER SHALL INCLUDE SUCH FINDINGS.

9 (C) IF THE COURT PLACES THE CHILD IN THE TEMPORARY CUSTODY OF THE
10 LOCAL COMMISSIONER, THE COURT SHALL:

11 (I) ORDER AN INVESTIGATION INTO THE FAMILY CIRCUMSTANCES OF THE CHILD;

12 (II) SET A RETURN DATE FOR AN INVESTIGATION REVIEW PROCEEDING WITHIN
13 FORTY-FIVE DAYS IN ACCORDANCE WITH SUBDIVISION FIVE OF THIS SECTION.

14 (III) SET A DATE CERTAIN FOR AN INITIAL PERMANENCY HEARING PURSUANT TO
15 PARAGRAPH TWO OF SUBDIVISION (A) OF SECTION ONE THOUSAND EIGHTY-NINE OF
16 THE FAMILY COURT ACT, WHICH DATE CERTAIN SHALL BE IN NO LATER THAN EIGHT
17 MONTHS FROM THE DATE THE SOCIAL SERVICES OFFICIAL ACCEPTED CARE OF THE
18 CHILD. THE DATE CERTAIN SHALL BE INCLUDED IN THE WRITTEN ORDER OF THE
19 COURT PLACING THE CHILD IN THE TEMPORARY CARE AND CUSTODY OF THE LOCAL
20 COMMISSIONER.

21 4. NOTICE. AT THE INITIAL APPEARANCE AND AT ANY HEARING THEREAFTER,
22 THE COURT MAY DIRECT THAT SERVICE OF A NOTICE OF THE PROCEEDING AND A
23 COPY OF THE PETITION SHALL BE MADE UPON THE PARENT, PARENTS, GUARDIAN,
24 OR OTHER LEGALLY RESPONSIBLE PERSON IN SUCH MANNER AS THE COURT MAY
25 DIRECT. IN THE EVENT THE COURT DETERMINES THAT SERVICE BY PUBLICATION IS
26 NECESSARY AND ORDERS SERVICE BY PUBLICATION, SERVICE SHALL BE MADE IN
27 ACCORDANCE WITH THE PROVISIONS OF RULE THREE HUNDRED SIXTEEN OF THE
28 CIVIL PRACTICE LAW AND RULES, PROVIDED, HOWEVER, THAT A SINGLE PUBLICA-
29 TION OF THE SUMMONS OR OTHER PROCESS WITH A NOTICE AS SPECIFIED HEREIN
30 IN ONLY ONE NEWSPAPER DESIGNATED IN THE ORDER SHALL BE SUFFICIENT. IN
31 NO EVENT SHALL THE WHOLE PETITION BE PUBLISHED. THE NOTICE TO BE
32 PUBLISHED WITH THE SUMMONS OR OTHER PROCESS SHALL STATE THE DATE, TIME,
33 PLACE AND PURPOSE OF THE PROCEEDING.

34 5. INVESTIGATION REVIEW PROCEEDING. AT THE INVESTIGATION REVIEW
35 PROCEEDING, THE COURT SHALL:

36 (A) REVIEW THE INVESTIGATION CONDUCTED BY THE LOCAL SOCIAL SERVICES
37 DISTRICT OF THE FAMILY CIRCUMSTANCES OF THE CHILD;

38 (B) DETERMINE WHETHER FURTHER INVESTIGATION IS NECESSARY, AND IF SO,
39 SET A DATE FOR ANOTHER INVESTIGATION REVIEW PROCEEDING;

40 (C) DETERMINE WHETHER NOTICE SHALL BE MADE UPON ANY PARENT, GUARDIAN,
41 OR OTHER LEGALLY RESPONSIBLE PERSON AND THE METHOD OF SUCH NOTICE;

42 (D) DETERMINE WHETHER A MOTION MUST BE MADE TO SUBSTITUTE A PETITION
43 UNDER ARTICLE TEN OF THE FAMILY COURT ACT; OR

44 (E) IF THE COURT DETERMINES THAT NO FURTHER INVESTIGATION OR NOTICE IS
45 NECESSARY, DETERMINE WHETHER THE CHILD IS A DESTITUTE CHILD WITHIN THE
46 MEANING OF SECTION THREE HUNDRED SEVENTY-ONE OF THIS TITLE.

47 6. DISPOSITION AND ORDER. IF THE COURT DETERMINES THAT THE CHILD IS A
48 DESTITUTE CHILD WITHIN THE MEANING OF SECTION THREE HUNDRED SEVENTY-ONE
49 OF THIS TITLE, THE COURT SHALL ISSUE AN ORDER PLACING THE CHILD IN THE
50 CARE AND CUSTODY OF THE LOCAL COMMISSIONER. SUCH ORDER SHALL CONTAIN THE
51 DATE CERTAIN PREVIOUSLY SET FOR THE INITIAL PERMANENCY HEARING. CHILDREN
52 PLACED UNDER THIS SECTION SHALL BE PLACED UNTIL THE COURT COMPLETES THE
53 INITIAL PERMANENCY HEARING. SHOULD THE COURT DETERMINE THAT PLACEMENT
54 WILL CONTINUE BEYOND COMPLETION OF THE INITIAL PERMANENCY HEARING,
55 SUBSEQUENT PERMANENCY HEARINGS SHALL BE SCHEDULED PURSUANT TO PARAGRAPH

1 TWO OF SUBDIVISION (A) OF SECTION ONE THOUSAND EIGHTY-NINE OF THE FAMILY
2 COURT ACT.

3 S 6. Subdivision 1 of section 398 of the social services law is
4 amended to read as follows:

5 1. As to destitute children: Assume charge of, and provide CARE AND
6 support for, any destitute child who cannot be properly cared for in his
7 OR HER home, AND FILE A PETITION TO OBTAIN CUSTODY OF SUCH CHILD PURSU-
8 ANT TO SECTION THREE HUNDRED EIGHTY-FOUR-D OF THIS ARTICLE.

9 S 7. The opening paragraph and paragraph (a) of subdivision 2 of
10 section 398 of the social services law, as amended by chapter 880 of the
11 laws of 1976, are amended to read as follows:

12 As to neglected, abused [or], abandoned, OR DESTITUTE children:

13 (a) Investigate [the] ANY alleged neglect, abuse or abandonment of a
14 child[,]; offer protective social services to prevent injury to the
15 child, to safeguard his OR HER welfare, and to preserve and stabilize
16 family life wherever possible [and,]; if necessary, bring the case
17 before the family court for adjudication and care for the child until
18 the court acts in the matter; and, in the case of an abandoned OR DESTI-
19 TUTE child, [shall] promptly petition the family court to obtain custody
20 of such child.

21 S 8. Paragraph (b) of subdivision 2 of section 398 of the social
22 services law, as amended by chapter 555 of the laws of 1978, is amended
23 to read as follows:

24 (b) Receive and care for any child alleged to be neglected, abused
25 [or], abandoned, OR DESTITUTE who is temporarily placed in [his] THE
26 care OF THE LOCAL COMMISSIONER by the family court pending adjudication
27 by such court of the alleged neglect, abuse or abandonment, OR FINDING
28 THAT THE CHILD IS A DESTITUTE CHILD, including the authority to estab-
29 lish, operate, maintain and approve facilities for such purpose in
30 accordance with the regulations of the [department] OFFICE OF CHILDREN
31 AND FAMILY SERVICES; and receive and care for any neglected, abused
32 [or], abandoned, OR DESTITUTE child placed or discharged to [his] THE
33 care OF THE LOCAL COMMISSIONER by the family court.

34 S 9. Paragraph (f) of subdivision 2 of section 398 of the social
35 services law, as added by chapter 627 of the laws of 1984, is amended to
36 read as follows:

37 (f) Report to the local criminal justice agency and to the statewide
38 central register for missing children as described in section eight
39 hundred thirty-seven-e of the executive law such information as required
40 on a form prescribed by the commissioner of the division of criminal
41 justice services within forty-eight hours after an abandoned OR DESTI-
42 TUTE child is found.

43 S 10. Paragraph (i) of subdivision 6 of section 398 of the social
44 services law is REPEALED.

45 S 11. Section 398-e of the social services law, as amended by chapter
46 584 of the laws of 2008, is amended to read as follows:

47 S 398-e. Eligibility for protective services, FOSTER CARE SERVICES,
48 and residential services for victims of domestic violence. An alien,
49 including a non-qualified alien, as determined by applicable federal
50 statute and regulation, is eligible for protective services for adults
51 and children, FOSTER CARE SERVICES, and residential services for victims
52 of domestic violence, to the extent such person is otherwise eligible
53 pursuant to this chapter and the regulations of the office of children
54 and family services and the office of temporary and disability assist-
55 ance.

S 12. Subdivision (a) of section 249 of the family court act, as amended by section 2 of part A of chapter 3 of the laws of 2005, is amended to read as follows:

(a) In a proceeding under article three, seven, ten or ten-A of this act or where a revocation of an adoption consent is opposed under section one hundred fifteen-b of the domestic relations law or in any proceeding under section three hundred fifty-eight-a, three hundred eighty-three-c, three hundred eighty-four [or], three hundred eighty-four-b, OR THREE HUNDRED EIGHTY-FOUR-D of the social services law or when a minor is sought to be placed in protective custody under section one hundred fifty-eight of this act, the family court shall appoint a law guardian to represent a minor who is the subject of the proceeding or who is sought to be placed in protective custody, if independent legal representation is not available to such minor. In any proceeding to extend or continue the placement of a juvenile delinquent or person in need of supervision pursuant to section seven hundred fifty-six or 353.3 of this act or any proceeding to extend or continue a commitment to the custody of the commissioner of mental health or the commissioner of mental retardation and developmental disabilities pursuant to section 322.2 of this act, the court shall not permit the respondent to waive the right to be represented by counsel chosen by the respondent, respondent's parent, or other person legally responsible for the respondent's care, or by a law guardian. In any other proceeding in which the court has jurisdiction, the court may appoint a law guardian to represent the child, when, in the opinion of the family court judge, such representation will serve the purposes of this act, if independent legal counsel is not available to the child. The family court on its own motion may make such appointment.

S 13. Article 6 of the family court act is amended by adding a new part 1-A to read as follows:

PART 1-A

VACATUR OF COMMITMENT OF GUARDIANSHIP AND CUSTODY;

REINSTATEMENT OF PARENTAL RIGHTS

SECTION 635. PETITION TO VACATE AN ORDER OF DISPOSITION COMMITTING THE GUARDIANSHIP AND CUSTODY OF A CHILD TO AN AUTHORIZED AGENCY AND REINSTATE PARENTAL RIGHTS.

636. ORIGINATING A PROCEEDING TO VACATE A COMMITMENT OF GUARDIANSHIP AND CUSTODY AND REINSTATE PARENTAL RIGHTS; SERVICE AND VENUE.

637. BURDEN OF PROOF AND FINDINGS.

638. DISPOSITION.

639. EFFECT OF ORDER.

S 635. PETITION TO VACATE AN ORDER OF DISPOSITION COMMITTING THE GUARDIANSHIP AND CUSTODY OF A CHILD TO AN AUTHORIZED AGENCY AND REINSTATE PARENTAL RIGHTS. VACATUR OF AN ORDER COMMITTING THE GUARDIANSHIP AND CUSTODY OF A CHILD TO AN AUTHORIZED AGENCY SO AS TO REINSTATE THE RIGHTS OF A PARENT OR PARENTS IS AN EXTRAORDINARY REMEDY THAT MAY BE REQUESTED BY THE ATTORNEY FOR THE CHILD, THE AUTHORIZED AGENCY TO WHOSE GUARDIANSHIP AND CUSTODY THE CHILD IS COMMITTED, OR THE RESPONDENT OR RESPONDENTS WHOSE PARENTAL RIGHTS THE PETITION WOULD SEEK TO REINSTATE, WHERE THE FOLLOWING CONDITIONS ARE MET:

(A) THE GUARDIANSHIP AND CUSTODY OF A CHILD WAS COMMITTED TO THE AUTHORIZED AGENCY OR INDIVIDUAL AT LEAST THREE YEARS PRIOR TO THE DATE OF THE FILING OF THE PETITION FOR VACATUR;

1 (B) THE BASIS FOR THE COMMITMENT OF GUARDIANSHIP AND CUSTODY WAS NOT
2 SEVERE OR REPEATED ABUSE AS DEFINED IN SUBDIVISION EIGHT OF SECTION
3 THREE HUNDRED EIGHTY-FOUR-B OF THE SOCIAL SERVICES LAW;

4 (C) THE CHILD IS FOURTEEN YEARS OF AGE OR OLDER, IS UNDER THE JURIS-
5 DICTION OF THE FAMILY COURT, HAS NOT BEEN ADOPTED AND NO ADOPTION
6 PROCEEDING IS PENDING, AND IF THE CHILD'S ATTORNEY IS NOT THE PETITION-
7 ER, THE CHILD CONSENTS TO THE FILING OF THE PETITION BY AFFIRMATION; AND

8 (D) IF THE RESPONDENT OR RESPONDENTS WHOSE PARENTAL RIGHTS THE PETI-
9 TION SEEKS TO REINSTATE IS NOT THE PETITIONER, SUCH RESPONDENT OR
10 RESPONDENTS CONSENTS OR CONSENT TO THE FILING OF THE PETITION BY AFFIR-
11 MATION.

12 S 636. ORIGINATING A PROCEEDING TO VACATE A COMMITMENT OF GUARDIANSHIP
13 AND CUSTODY AND REINSTATE PARENTAL RIGHTS; SERVICE AND VENUE. (A) A
14 PROCEEDING TO VACATE THE ORDER OF DISPOSITION COMMITTING GUARDIANSHIP
15 AND CUSTODY OF A CHILD TO AN AUTHORIZED AGENCY AND REINSTATE PARENTAL
16 RIGHTS SHALL BE ORIGINATED BY A PETITION FILED BY THE CHILD'S LAW GUARD-
17 IAN, THE AUTHORIZED AGENCY TO WHOSE GUARDIANSHIP AND CUSTODY THE CHILD
18 WAS COMMITTED, OR THE RESPONDENT OR RESPONDENTS WHOSE PARENTAL RIGHTS
19 THE PETITION SEEKS TO REINSTATE.

20 (B) SUCH PETITION SHALL BE SERVED ON THE ATTORNEY FOR THE CHILD, THE
21 AUTHORIZED AGENCY TO WHICH THE CHILD'S GUARDIANSHIP AND CUSTODY WAS
22 COMMITTED AND THE RESPONDENT OR RESPONDENTS WHOSE PARENTAL RIGHTS THE
23 PETITION SEEKS TO REINSTATE, AS WELL AS THE ATTORNEY OR ATTORNEYS WHO
24 REPRESENTED THE RESPONDENT OR RESPONDENTS IN THE PROCEEDING FOR THE
25 TERMINATION OF PARENTAL RIGHTS.

26 (C) A CERTIFIED COPY OF THE ORDER OF DISPOSITION IN THE TERMINATION OF
27 PARENTAL RIGHTS PROCEEDING AND AFFIRMATIONS CONTAINING THE CONSENTS
28 REQUIRED BY SECTION SIX HUNDRED THIRTY-FIVE OF THIS PART SHALL BE
29 ATTACHED TO THE PETITION.

30 (D) UPON THE FILING OF A PETITION UNDER THIS PART, THE COURT SHALL
31 CAUSE A SUMMONS TO BE ISSUED TO THE CHILD, THE AUTHORIZED AGENCY TO
32 WHICH THE CHILD'S GUARDIANSHIP AND CUSTODY WAS COMMITTED, AND THE
33 RESPONDENT OR RESPONDENTS WHOSE PARENTAL RIGHTS THE PETITION SEEKS TO
34 REINSTATE, EACH OF WHOM SHALL BE PARTY TO THE PROCEEDING. THE SUMMONS
35 SHALL BE SERVED IN ACCORDANCE WITH SECTION SIX HUNDRED SEVENTEEN OF THIS
36 ARTICLE, ACCOMPANIED BY A COPY OF THE PETITION, THE ORDER OF COMMITMENT,
37 AND THE AFFIDAVITS OF CONSENT.

38 (E) A PETITION BROUGHT PURSUANT TO THIS PART SHALL BE FILED WITH THE
39 COURT THAT EXERCISED JURISDICTION OVER THE MOST RECENT PERMANENCY
40 PROCEEDING INVOLVING THE CHILD AND SHALL BE ASSIGNED, WHEREVER PRACTICA-
41 BLE, TO THE FAMILY COURT JUDGE WHO PRESIDED OVER THAT PROCEEDING OR THE
42 PROCEEDING FOR THE TERMINATION OF PARENTAL RIGHTS.

43 (F) WHEREVER PRACTICABLE, THE CHILD SHALL BE REPRESENTED BY THE LAW
44 GUARDIAN THAT REPRESENTED THE CHILD IN THE MOST RECENT PERMANENCY
45 PROCEEDING AND THE PARENT OR PARENTS SHALL BE REPRESENTED BY THE ATTOR-
46 NEY OR ATTORNEYS WHO REPRESENTED THE PARENT OR PARENTS IN THE PROCEEDING
47 FOR TERMINATION OF PARENTAL RIGHTS. WHERE THIS IS NOT PRACTICABLE, OR
48 WHERE THE COURT GRANTS A REQUEST BY THE LAW GUARDIAN OR ATTORNEY OR
49 ATTORNEYS TO BE RELIEVED, THE COURT SHALL IMMEDIATELY ASSIGN A NEW LAW
50 GUARDIAN, ATTORNEY OR ATTORNEYS, AS APPLICABLE.

51 S 637. BURDEN OF PROOF AND FINDINGS. THE PETITIONER SHALL HAVE THE
52 BURDEN OF PROOF BY CLEAR AND CONVINCING EVIDENCE THAT VACATUR OF THE
53 ORDER OF DISPOSITION COMMITTING GUARDIANSHIP AND CUSTODY OF THE CHILD TO
54 THE AUTHORIZED AGENCY AND REINSTATEMENT OF PARENTAL RIGHTS IS IN THE
55 CHILD'S BEST INTERESTS AND THAT THE NECESSARY PARTIES CONSENT TO SUCH
56 VACATUR AND REINSTATEMENT AS REQUIRED BY SECTION SIX HUNDRED THIRTY-FIVE

1 OF THIS PART. IN DETERMINING WHETHER THE BURDEN OF PROOF HAS BEEN MET,
2 THE COURT SHALL TAKE INTO ACCOUNT THE FOLLOWING FACTORS:

3 (A) THE BOND BETWEEN THE CHILD AND THE PARENT OR PARENTS;

4 (B) THE ABILITY OF THE PARENT OR PARENTS TO SAFELY PARENT THE CHILD;
5 AND

6 (C) THE LIKELIHOOD OF THE CHILD BEING ADOPTED, INCLUDING THE CHILD'S
7 WILLINGNESS TO BE ADOPTED.

8 S 638. DISPOSITION. THE COURT SHALL ISSUE A WRITTEN DECISION WHICH
9 SETS FORTH THE BASIS FOR THE COURT'S DECISION AND MAKES ONE OF THE
10 FOLLOWING ORDERS OF DISPOSITION:

11 (A) THE COURT MAY DISMISS THE PETITION BROUGHT PURSUANT TO THIS PART,
12 IN WHICH CASE THE CHILD WILL RETAIN THE STATUS OF A FREED CHILD AND WILL
13 REMAIN IN THE GUARDIANSHIP AND CUSTODY OF THE AUTHORIZED AGENCY;

14 (B) THE COURT MAY GRANT THE PETITION BROUGHT PURSUANT TO THIS PART AND
15 VACATE THE ORDER OF DISPOSITION PREVIOUSLY ENTERED IN THE TERMINATION OF
16 PARENTAL RIGHTS PROCEEDING AND REINSTATE THE GUARDIANSHIP AND CUSTODY OF
17 THE CHILD TO THE PARENT WHO IS THE SUBJECT OF THE PETITION; OR

18 (C) THE COURT MAY ISSUE A TEMPORARY ORDER STAYING THE PROCEEDING FOR A
19 PERIOD NOT TO EXCEED SIX MONTHS WHICH MAY NOT BE EXTENDED. DURING THIS
20 PERIOD A TRIAL DISCHARGE OF THE CHILD TO THE PHYSICAL CUSTODY OF THE
21 PARENT OR PARENTS MAY OCCUR, WITH THE AUTHORIZED AGENCY RETAINING GUAR-
22 DIANSHIP AND CUSTODY OF THE CHILD. THE COURT MAY DIRECT THE AUTHORIZED
23 AGENCY TO PROVIDE SUPERVISION TO THE PARENT OR PARENTS DURING THE STAY
24 OF PROCEEDINGS. THE COURT SHALL SCHEDULE A DATE CERTAIN FOR FINAL REVIEW
25 AND DISPOSITION OF THE PETITION AT LEAST THIRTY DAYS PRIOR TO THE EXPI-
26 RATION OF THE STAY, AT WHICH TIME THE PARTIES MAY SUBMIT ANY ADDITIONAL
27 EVIDENCE ARISING SINCE THE FILING OF THE PETITION.

28 S 639. EFFECT OF ORDER. THE VACATUR OF THE COMMITMENT OF CUSTODY AND
29 GUARDIANSHIP OF THE CHILD TO AN AUTHORIZED AGENCY AND REINSTATEMENT OF A
30 PARENT'S RIGHTS SHALL HAVE NO EFFECT UPON THE UNDERLYING ORDER OF FACT-
31 FINDING MADE IN THE TERMINATION OF PARENTAL RIGHTS PROCEEDING AND SHALL
32 HAVE NO EFFECT UPON THE RIGHTS OF A PARENT WHO IS NOT THE SUBJECT OF THE
33 PETITION TO VACATE OR WHOSE REINSTATEMENT OF RIGHTS IS FOUND NOT TO BE
34 IN THE BEST INTERESTS OF THE CHILD. SHOULD THE CHILD RETURN TO THE
35 CUSTODY OF THE AUTHORIZED AGENCY OR OTHERWISE BE PLACED OUTSIDE OF THE
36 HOME FOLLOWING THE REINSTATEMENT OF PARENTAL RIGHTS, ANY FUTURE PROCEED-
37 ING TO TERMINATE PARENTAL RIGHTS MAY NOT RELY SOLELY UPON THE PRIOR
38 ORDER OF FACT-FINDING MADE PURSUANT TO SUBDIVISION (C) OF SECTION SIX
39 HUNDRED THIRTY-ONE OF THIS ARTICLE OR SUBDIVISION THREE OF SECTION THREE
40 HUNDRED EIGHTY-FOUR-B OF THE SOCIAL SERVICES LAW.

41 S 14. Section 1086 of the family court act, as added by section 27 of
42 part A of chapter 3 of the laws of 2005, is amended to read as follows:

43 S 1086. Purpose. The purpose of this article is to establish uniform
44 procedures for permanency hearings for all children who are placed in
45 foster care pursuant to section three hundred fifty-eight-a, three
46 hundred eighty-four [or], three hundred eighty-four-a, OR THREE HUNDRED
47 EIGHTY-FOUR-D of the social services law or pursuant to section one
48 thousand twenty-two, one thousand twenty-seven, or one thousand fifty-
49 two of this act; children who are directly placed with a relative pursu-
50 ant to section one thousand seventeen or one thousand fifty-five of this
51 act; and children who are freed for adoption. It is meant to provide
52 children placed out of their homes timely and effective judicial review
53 that promotes permanency, safety and well-being in their lives.

54 S 15. Subdivision (a) of section 1087 of the family court act, as
55 added by section 27 of part A of chapter 3 of the laws of 2005, is
56 amended to read as follows:

1 (a) "Child" shall mean a person under the age of eighteen who is
2 placed in foster care pursuant to section three hundred fifty-eight-a,
3 three hundred eighty-four [or], three hundred eighty-four-a OR THREE
4 HUNDRED EIGHTY-FOUR-D of the social services law or pursuant to section
5 one thousand twenty-two, one thousand twenty-seven, or one thousand
6 fifty-two of this act; or directly placed with a relative pursuant to
7 section one thousand seventeen or one thousand fifty-five of this act;
8 or who has been freed for adoption or a person between the ages of eigh-
9 teen and twenty-one who has consented to continuation in foster care.

10 S 16. Section 1088 of the family court act, as added by section 27 of
11 part A of chapter 3 of the laws of 2005, is amended to read as follows:

12 S 1088. Continuing court jurisdiction. If a child is placed pursuant
13 to section three hundred fifty-eight-a, three hundred eighty-four, [or]
14 three hundred eighty-four-a OR THREE HUNDRED EIGHTY-FOUR-D of the social
15 services law, or pursuant to section one thousand seventeen, one thou-
16 sand twenty-two, one thousand twenty-seven or one thousand fifty-two of
17 this act, or directly placed with a relative pursuant to section one
18 thousand seventeen or one thousand fifty-five of this act; or if the
19 child is freed for adoption pursuant to section three hundred eighty-
20 three-c, three hundred eighty-four or three hundred eighty-four-b of the
21 social services law, the case shall remain on the court's calendar and
22 the court shall maintain jurisdiction over the case until the child is
23 discharged from placement and all orders regarding supervision,
24 protection or services have expired. The court shall rehear the matter
25 whenever it deems necessary or desirable, or upon motion by any party
26 entitled to notice in proceedings under this article, or by the law
27 guardian for the child, and whenever a permanency hearing is required by
28 this article. While the court maintains jurisdiction over the case, the
29 provisions of section one thousand thirty-eight of this act shall
30 continue to apply.

31 S 17. Paragraph 2 of subdivision (a) of section 1089 of the family
32 court act, as amended by chapter 437 of the laws of 2006, is amended to
33 read as follows:

34 (2) All other permanency hearings. At the conclusion of the hearing
35 pursuant to section one thousand twenty-two, one thousand twenty-seven,
36 or one thousand fifty-two of this act, OR SECTION THREE HUNDRED EIGHTY-
37 FOUR-D OF THE SOCIAL SERVICES LAW, at which the child was remanded or
38 placed and upon the court's approval of a voluntary placement instrument
39 pursuant to section three hundred fifty-eight-a of the social services
40 law, the court shall set a date certain for an initial permanency hear-
41 ing, advise all parties in court of the date set and include the date in
42 the order. Orders issued in subsequent court hearings prior to the
43 permanency hearing, including, but not limited to, the order of place-
44 ment issued pursuant to section one thousand fifty-five of this act, OR
45 SECTION THREE HUNDRED EIGHTY-FOUR-D OF THE SOCIAL SERVICES LAW, shall
46 include the date certain for the permanency hearing. The initial perman-
47 ency hearing shall be commenced no later than six months from the date
48 which is sixty days after the child was removed from his or her home;
49 provided, however, that if a sibling or half-sibling of the child has
50 previously been removed from the home and has a permanency hearing date
51 certain scheduled within the next eight months, the permanency hearing
52 for each child subsequently removed from the home shall be scheduled on
53 the same date certain that has been set for the first child removed from
54 the home, unless such sibling or half-sibling has been removed from the
55 home pursuant to article three or seven of this act. The permanency

1 hearing shall be completed within thirty days of the scheduled date
2 certain.

3 S 18. Subdivision (a) of section 1090 of the family court act, as
4 added by section 27 of part A of chapter 3 of the laws of 2005, is
5 amended to read as follows:

6 (a) If a law guardian for the child has been appointed by the family
7 court in a proceeding pursuant to section three hundred fifty-eight-a,
8 three hundred eighty-three-c, three hundred eighty-four, [or] three
9 hundred eighty-four-b, OR THREE HUNDRED EIGHTY-FOUR-D of the social
10 services law, or article ten of this act, the appointment of the law
11 guardian shall continue without further court order or appointment,
12 unless another appointment of a law guardian has been made by the court,
13 until the child is discharged from placement and all orders regarding
14 supervision, protection or services have expired. All notices, reports
15 and motions required by law shall be provided to such law guardian. The
16 law guardian may be relieved of his or her representation upon applica-
17 tion to the court for termination of the appointment. Upon approval of
18 the application, the court shall immediately appoint another law guardi-
19 an to whom all notices, reports, and motions required by law shall be
20 provided.

21 S 19. This act shall take effect on the ninetieth day after it shall
22 have become a law.