

1338

2009-2010 Regular Sessions

I N S E N A T E

January 28, 2009

Introduced by Sen. SKELOS -- 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 domestic relations law, in relation to abandoned infants

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

1 Section 1. Section 1012 of the family court act is amended by adding
2 a new subdivision (f-1) to read as follows:
3 (F-1) A CHILD IS AN "ABANDONED INFANT" WHEN THE COURT ENTERS AN ORDER
4 PURSUANT TO SECTION ONE THOUSAND FIFTY-ONE-A OF THIS ARTICLE THAT SUCH
5 CHILD IS NOT MORE THAN FIVE DAYS OLD AND HAS BEEN LEFT BY A PARENT IN A
6 MANNER WHICH INDICATES INTENT TO SURRENDER AND RELINQUISH ALL RESPONSIBILITY FOR THE CARE OF SUCH CHILD.
7 S 2. Paragraph (ii) of subdivision (f) of section 1012 of the family
8 court act, as amended by chapter 666 of the laws of 1976, is amended to
9 read as follows:
10 (ii) who has been abandoned, in accordance with the definition and
11 other criteria set forth in subdivision five of section three hundred
12 eighty-four-b of the social services law, by his OR HER parents or other
13 person legally responsible for his OR HER care, BUT SHALL NOT INCLUDE AN
14 ABANDONED INFANT AS DEFINED IN SUBDIVISION (F-1) OF THIS SECTION.
15 S 3. Subdivision (j) of section 1012 of the family court act, as
16 amended by section 3 of part B of chapter 3 of the laws of 2005, is
17 amended to read as follows:
18 (j) "Aggravated circumstances" means where a child has been either
19 severely or repeatedly abused, as defined in subdivision eight of
20 section three hundred eighty-four-b of the social services law; OR WHERE
21 A CHILD HAS BEEN DETERMINED TO BE AN ABANDONED INFANT PURSUANT TO
22 SECTION ONE THOUSAND FIFTY-ONE-A OF THIS ARTICLE; or where a child has
23 subsequently been found to be an abused child, as defined in paragraph
24 (i) or (iii) of subdivision (e) of this section, within five years after
25

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

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1 return home following placement in foster care as a result of being
2 found to be a neglected child, as defined in subdivision (f) of this
3 section, provided that the respondent or respondents in each of the
4 foregoing proceedings was the same; or where the court finds by clear
5 and convincing evidence that the parent of a child in foster care has
6 refused and has failed completely, over a period of at least six months
7 from the date of removal, to engage in services necessary to eliminate
8 the risk of abuse or neglect if returned to the parent, and has failed
9 to secure services on his or her own or otherwise adequately prepare for
10 the return home and, after being informed by the court that such an
11 admission could eliminate the requirement that the local department of
12 social services provide reunification services to the parent, the parent
13 has stated in court under oath that he or she intends to continue to
14 refuse such necessary services and is unwilling to secure such services
15 independently or otherwise prepare for the child's return home;
16 provided, however, that if the court finds that adequate justification
17 exists for the failure to engage in or secure such services, including
18 but not limited to a lack of child care, a lack of transportation, and
19 an inability to attend services that conflict with the parent's work
20 schedule, such failure shall not constitute an aggravated circumstance;
21 or where a court has determined a child five days old or younger was
22 abandoned by a parent with an intent to wholly abandon such child and
23 with the intent that the child be safe from physical injury and cared
24 for in an appropriate manner.

25 S 4. Section 1042 of the family court act, as amended by section 4 of
26 part B of chapter 3 of the laws of 2005, is amended to read as follows:

27 S 1042. Effect of absence of parent or other person responsible for
28 care. If the parent or other person legally responsible for the child's
29 care is not present, the court may proceed to hear a petition under this
30 article only if the child is represented by counsel, a law guardian, or
31 a guardian ad litem. The parent or other person legally responsible for
32 the child's care shall be served with a copy of the order of disposition
33 with written notice of its entry pursuant to section one thousand thir-
34 ty-six of this article. Within one year of such service or substituted
35 service pursuant to section one thousand thirty-six of this article, the
36 parent or other person legally responsible for the child's care may move
37 to vacate the order of disposition and schedule a rehearing. Such motion
38 shall be granted on an affidavit showing such relationship or responsi-
39 bility and a meritorious defense to the petition, unless THE CHILD HAS
40 BEEN DECLARED AN ABANDONED INFANT PURSUANT TO SECTION ONE THOUSAND
41 FIFTY-ONE-A OF THIS ARTICLE AND THE PARENTS HAVE FAILED TO ASSERT A
42 CLAIM OF CUSTODY WITHIN THE TIME PERIOD SET FORTH IN SUCH SECTION, OR
43 the court finds that the parent or other person willfully refused to
44 appear at the hearing, in which case the court may deny the motion.

45 S 5. Paragraph (ii) of subdivision (b) of section 1055 of the family
46 court act, as amended by section 18 of part A of chapter 3 of the laws
47 of 2005, is amended to read as follows:

48 (ii) (A) Upon placing a child under the age of one, who has been aban-
49 doned AS DEFINED IN PARAGRAPH (II) OF SUBDIVISION (F) OF SECTION ONE
50 THOUSAND TWELVE OF THIS ARTICLE, with a local commissioner of social
51 services, the court shall, where either of the parents do not appear
52 after due notice, include in its order of disposition pursuant to
53 section one thousand fifty-two of this part, a direction that such
54 commissioner shall promptly commence a diligent search to locate the
55 child's non-appearing parent or parents or other known relatives who are
56 legally responsible for the child, and to commence a proceeding to

1 commit the guardianship and custody of such child to an authorized agen-
2 cy pursuant to section three hundred eighty-four-b of the social
3 services law, six months from the date that care and custody of the
4 child was transferred to the commissioner, unless there has been commu-
5 nication and visitation between such child and such parent or parents or
6 other known relatives or persons legally responsible for the child. In
7 addition to such diligent search the local commissioner of social
8 services shall provide written notice to the child's parent or parents
9 or other known relatives or persons legally responsible as provided for
10 in this paragraph. Such notice shall be served upon such parent or
11 parents or other known relatives or persons legally responsible in the
12 manner required for service of process pursuant to section six hundred
13 seventeen of this act. Information regarding such diligent search,
14 including, but not limited to, the name, last known address, social
15 security number, employer's address and any other identifying informa-
16 tion to the extent known regarding the non-appearing parent, shall be
17 recorded in the uniform case record maintained pursuant to section four
18 hundred nine-f of the social services law.

19 (B) AN ABANDONED INFANT, AS DEFINED IN SUBDIVISION (F-1) OF SECTION
20 ONE THOUSAND TWELVE OF THIS ARTICLE, SHALL NOT BE SUBJECT TO THE
21 REQUIREMENTS OF SUBPARAGRAPH (A) OF THIS PARAGRAPH.

22 S 6. The family court act is amended by adding a new section 1031-a to
23 read as follows:

24 S 1031-A. ABANDONED INFANTS. (A) A PROCEEDING TO DETERMINE WHETHER A
25 CHILD IS AN ABANDONED INFANT SHALL BE COMMENCED WITHIN SIX BUSINESS DAYS
26 OF A LOCAL COMMISSIONER OF SOCIAL SERVICES RECEIPT OF NOTIFICATION THAT
27 A CHILD ALLEGED TO BE AN ABANDONED INFANT HAS BEEN FOUND IN THE JURIS-
28 DICTION OF THE LOCAL SOCIAL SERVICES AGENCY.

29 (B) THE PETITION SHALL ALLEGE THE FACTS SURROUNDING THE HISTORY AND
30 CURRENT CUSTODY OF THE CHILD, INCLUDING BUT NOT LIMITED TO:

31 (I) THE LOCATION THE CHILD WAS SURRENDERED OR ABANDONED;

32 (II) THE DATE OF SUCH OCCURRENCE;

33 (III) THE AFFIDAVIT OF THE LICENSED PHYSICIAN CERTIFYING SUCH PHYSI-
34 CIAN'S DETERMINATION AS TO THE AGE OF THE INFANT;

35 (IV) THE NAMES AND ADDRESSES OF ANY PROSPECTIVE FOSTER CARE OR ADOP-
36 TIVE HOMES; AND

37 (V) ANY OTHER INFORMATION THAT WOULD FACILITATE THE COURT'S DETERMI-
38 NATION.

39 (C) THE PETITION SHALL ALSO MAKE AN APPLICATION PURSUANT TO SECTION
40 ONE THOUSAND THIRTY-NINE-B OF THIS PART FOR THE COURT TO DETERMINE THAT
41 REASONABLE EFFORTS TO RETURN THE CHILD TO HIS OR HER HOME ARE NOT
42 REQUIRED BASED UPON A FINDING THAT THE CHILD HAS BEEN DECLARED AN ABAN-
43 DONED INFANT.

44 (D) THE COURT SHALL APPOINT A LAW GUARDIAN TO REPRESENT THE INTERESTS
45 OF ANY CHILD NAMED IN A PETITION WHO IS ALLEGED TO BE AN ABANDONED
46 INFANT.

47 (E) NO PROCEEDING MAY CONTINUE UNDER THIS SECTION UNLESS THE COURT
48 ENTERS A FINDING:

49 (I) THAT THE CHILD WAS NOT MORE THAN FIVE DAYS OLD AT THE TIME OF THE
50 ABANDONMENT; AND

51 (II) THAT THE PARENT LEFT THE CHILD IN A MANNER WHICH INDICATES INTENT
52 TO SURRENDER AND RELINQUISH ALL RESPONSIBILITY FOR THE CARE OF SUCH
53 CHILD.

54 (F) ALL AUTHORITY GRANTED TO THE LOCAL COMMISSIONER OF SOCIAL SERVICES
55 RELATING TO THE CARE AND CUSTODY OF THE INFANT PURSUANT TO THE SOCIAL
56 SERVICES LAW SHALL CONTINUE UNTIL FURTHER ORDER OF THE COURT.

1 S 7. The family court act is amended by adding a new section 1051-a to
2 read as follows:

3 S 1051-A. SUSTAINING OR DISMISSING A PETITION ALLEGING AN ABANDONED
4 INFANT. (A) IF FACTS SUFFICIENT TO SUSTAIN A PETITION UNDER SECTION ONE
5 THOUSAND THIRTY-ONE-A OF THIS ARTICLE ARE ESTABLISHED, THE COURT SHALL
6 ENTER AN ORDER FINDING THAT THE CHILD IS AN ABANDONED INFANT AND SHALL
7 STATE IN ITS ORDER:

8 (I) THAT, WITHIN A REASONABLE MEDICAL CERTAINTY, THE CHILD WAS NOT
9 MORE THAN FIVE DAYS OLD WHEN HE OR SHE WAS ABANDONED;

10 (II) THE DATE THE CHILD WAS BORN, WITHIN A REASONABLE MEDICAL CERTAIN-
11 TY;

12 (III) THAT THE CHILD WAS LEFT IN A MANNER THAT INDICATED HIS OR HER
13 PARENT'S INTENT TO RELINQUISH RESPONSIBILITY FOR AND RIGHT TO THE CARE
14 AND CUSTODY OF SUCH CHILD;

15 (IV) THAT BASED UPON THE FINDINGS OF PARAGRAPHS (I) AND (III) OF THIS
16 SUBDIVISION, THE CHILD IS AN ABANDONED INFANT PURSUANT TO SUBDIVISION
17 (F-1) OF SECTION ONE THOUSAND TWELVE OF THIS ARTICLE; AND

18 (V) THAT BASED UPON SUCH FINDING THAT THE CHILD IS AN ABANDONED
19 INFANT, REASONABLE EFFORTS TO RETURN THE CHILD TO HIS OR HER HOME ARE
20 NOT REQUIRED.

21 (B) (I) IF FACTS SUFFICIENT TO SUSTAIN THE PETITION UNDER SECTION ONE
22 THOUSAND THIRTY-ONE-A OF THIS ARTICLE ARE NOT ESTABLISHED DUE TO THE
23 CHILD BEING MORE THAN FIVE DAYS OLD AT THE TIME OF ABANDONMENT THE COURT
24 SHALL CONVERT THE PETITION TO A PROCEEDING TO DETERMINE NEGLECT PURSUANT
25 TO SECTION ONE THOUSAND THIRTY-ONE OF THIS ARTICLE AND SHALL STATE ON
26 THE RECORD THE GROUNDS FOR THE CONVERSION. TEMPORARY CUSTODY OF THE
27 CHILD SHALL CONTINUE UNTIL FURTHER ORDER OF THE COURT. THE COURT SHALL
28 ALSO REFER THE MATTER TO THE APPROPRIATE DISTRICT ATTORNEY'S OFFICE AND
29 DIRECT THE LOCAL COMMISSIONER OF SOCIAL SERVICES TO ORIGINATE A PROCEED-
30 ING UNDER SECTION ONE THOUSAND THIRTY-ONE OF THIS ARTICLE WITHIN SEVEN
31 DAYS.

32 (II) IF THE FACTS SUFFICIENT TO SUSTAIN THE PETITION UNDER THIS
33 SECTION ARE NOT ESTABLISHED DUE TO AN INABILITY TO DETERMINE THE INTENT
34 OF THE PARENT OR PARENTS THEN THE COURT SHALL CONVERT THE PETITION TO A
35 PROCEEDING TO DETERMINE NEGLECT PURSUANT TO SECTION ONE THOUSAND THIR-
36 TY-ONE OF THIS ARTICLE AND SHALL STATE ON THE RECORD THE GROUNDS FOR THE
37 CONVERSION. TEMPORARY CUSTODY OF THE CHILD SHALL CONTINUE UNTIL FURTHER
38 ORDER OF THE COURT. FOR THE PURPOSES OF THIS PARAGRAPH, ABANDONMENT IN
39 THE MANNER PRESCRIBED BY SECTION 260.03 OF THE PENAL LAW SHALL BE
40 PRESUMPTIVE EVIDENCE OF INTENT TO SURRENDER AND RELINQUISH ALL RESPONSI-
41 BILITY FOR THE CARE OF SUCH CHILD.

42 (C) THE COURT SHALL COMMENCE A DISPOSITIONAL HEARING IMMEDIATELY UPON
43 COMPLETION OF THE FACT-FINDING HEARING. AT THE CONCLUSION OF SUCH DISPO-
44 SITIONAL HEARING THE COURT SHALL ENTER AN ORDER OF DISPOSITION:

45 (I) PLACING THE CHILD IN THE CUSTODY OF THE LOCAL COMMISSIONER OF
46 SOCIAL SERVICES IN ACCORD WITH THE PROVISIONS OF SECTION ONE THOUSAND
47 FIFTY-FIVE OF THIS PART, UPON A DETERMINATION THAT:

48 (A) CONTINUATION IN THE CHILD'S HOME WOULD BE CONTRARY TO THE BEST
49 INTERESTS OF THE CHILD; AND

50 (B) WHERE THE COURT HAS DETERMINED THAT THE CHILD IS AN ABANDONED
51 INFANT, REASONABLE EFFORTS TO PREVENT OR ELIMINATE THE NEED FOR REMOVING
52 THE CHILD FROM HIS OR HER HOME OR TO MAKE IT POSSIBLE FOR THE CHILD TO
53 RETURN SAFELY TO HIS OR HER HOME ARE NOT REQUIRED;

54 (II) REQUIRING THE LOCAL COMMISSIONER OF SOCIAL SERVICES TO COMMENCE A
55 PROCEEDING TO COMMIT THE GUARDIANSHIP AND CUSTODY OF SUCH CHILD TO AN
56 AUTHORIZED AGENCY PURSUANT TO SECTION THREE HUNDRED EIGHTY-FOUR-B OF THE

1 SOCIAL SERVICES LAW IN SIXTY DAYS, PROVIDED THAT NO PETITION HAS BEEN
2 BROUGHT PURSUANT TO SECTION ONE THOUSAND SIXTY-ONE-A OF THIS ARTICLE.
3 UPON RECEIVING SUCH PETITION, THE COURT SHALL SCHEDULE A DATE CERTAIN
4 FOR THE FACT-FINDING AND DISPOSITIONAL HEARING REGARDING SUCH PETITION
5 WHICH SHALL BE NINETY DAYS FROM THE DATE THAT THE CHILD WAS FOUND TO BE
6 AN ABANDONED INFANT PURSUANT TO THIS SECTION;

7 (III) REQUIRING THE LOCAL COMMISSIONER OF SOCIAL SERVICES TO CAUSE
8 NOTICE OF THE PROCEEDING INSTITUTED PURSUANT TO SECTION THREE HUNDRED
9 EIGHTY-FOUR-B OF THE SOCIAL SERVICES LAW TO BE PUBLISHED IN ACCORDANCE
10 WITH THE PROVISIONS OF RULE THREE HUNDRED SIXTEEN OF THE CIVIL PRACTICE
11 LAW AND RULES IN THE COUNTY IN WHICH SUCH CHILD WAS FOUND. THE NOTICE
12 SHALL STATE:

13 (A) THE DATE, TIME AND PURPOSE OF THE PROCEEDING;

14 (B) THE DATE, TIME AND PLACE THAT THE ABANDONED INFANT WAS FOUND;

15 (C) A DESCRIPTION OF THE INFANT INCLUDING ITS APPROXIMATE DATE OF
16 BIRTH;

17 (D) THAT UPON FAILURE TO APPEAR, ALL PARENTAL RIGHTS OF THE PARENTS OF
18 SUCH ABANDONED INFANT SHALL BE TERMINATED;

19 (E) THAT A PARENT'S FAILURE TO APPEAR SHALL CONSTITUTE A DENIAL OF HIS
20 OR HER INTEREST IN THE CHILD, WHICH DENIAL SHALL RESULT, WITHOUT FURTHER
21 NOTICE, IN THE COMMITMENT OF THE CUSTODY AND GUARDIANSHIP OF THE CHILD
22 TO THE LOCAL COMMISSIONER OF SOCIAL SERVICES AND IN THE CHILD'S
23 ADOPTION; AND

24 (F) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE PERSON DESIGNATED
25 BY THE LOCAL COMMISSIONER OF SOCIAL SERVICES TO CONTACT FOR INFORMATION
26 REGARDING SUCH CHILD.

27 S 8. The family court act is amended by adding a new section 1061-a to
28 read as follows:

29 S 1061-A. CUSTODY CLAIM BY PARENT OF AN ABANDONED INFANT. (A) AT ANY
30 TIME PRIOR TO THE CHILD BEING FREED FOR ADOPTION EITHER PARENT MAY
31 INSTITUTE AN ACTION TO ASSERT A CLAIM FOR CUSTODY OF THE CHILD DECLARED
32 AN ABANDONED INFANT PURSUANT TO SECTION ONE THOUSAND FIFTY-ONE-A OF THIS
33 ARTICLE. SUCH PROCEEDING SHALL BE BROUGHT WITHIN THE COUNTY WHERE SUCH
34 INFANT IS FOUND. SUCH PROCEEDING SHALL ORIGINATE BY PETITION AND SHALL
35 NAME THE LOCAL COMMISSIONER OF SOCIAL SERVICES, AND BOTH THE PARENTS, IF
36 KNOWN. IN THE EVENT THE WHEREABOUTS OF EITHER PARENT IS UNKNOWN THE
37 PETITION SHALL SO STATE AND THE COURT MAY PROCEED IN SAID PARENT'S
38 ABSENCE. A FILING OF A PETITION UNDER THIS SECTION SHALL TOLL THE TIME
39 FOR FREEING THE CHILD FOR ADOPTION AS PROVIDED FOR IN SUBDIVISION (A) OF
40 SECTION ONE THOUSAND FIFTY-ONE-A OF THIS ARTICLE. NOTICE SHALL BE
41 SERVED UPON THE LAW GUARDIAN APPOINTED PURSUANT TO SUBDIVISION (D) OF
42 SECTION ONE THOUSAND THIRTY-ONE-A OF THIS ARTICLE. IN DETERMINING CUSTO-
43 DY OF THE INFANT THE COURT SHALL CONSIDER THE BEST INTEREST OF THE
44 CHILD. PENDING A DETERMINATION IN THIS MATTER, THE INFANT SHALL REMAIN
45 IN THE CARE AND CUSTODY OF THE LOCAL COMMISSIONER OF SOCIAL SERVICES
46 UNLESS THE COURT DIRECTS OTHERWISE.

47 (B) IN THE EVENT THAT PETITIONER WHO ALLEGES TO BE A PUTATIVE FATHER,
48 RECITES IN A PETITION, FILED IN THE COUNTY WHEREIN HE RESIDES, FACTS
49 THAT ALLEGE HE IS THE FATHER OF AN INFANT WHOSE WHEREABOUTS ARE UNKNOWN
50 DUE TO THE CONCEALMENT AND PROBABLE ABANDONMENT OF THE RESPONDENT MOTH-
51 ER, THE PETITION MAY BE SERVED UPON THE MOTHER SEEKING AS ITS SOLE REME-
52 DY, THE LOCATION WHERE THE INFANT WAS ABANDONED. RESPONDENT MOTHER MAY
53 THEN AVOID APPEARING IN COURT BY FILING A SWORN STATEMENT WITHIN TEN
54 DAYS DISCLOSING THE LOCATION THE CHILD WAS ABANDONED. A COURT MAY
55 COMPEL, BY THE POWERS OF CONTEMPT, THE DISCLOSURE OF THE INFANT'S WHERE-
56 ABOUTS. UPON DISCLOSURE OF THE INFANT'S LOCATION THE PETITION TO ASSERT

1 THE CLAIM OF CUSTODY SHALL BE TRANSFERRED TO THE COUNTY WHEREIN THE
2 INFANT IS RESIDING FOR FURTHER PROCEEDINGS.

3 (C) THE RECORDS AND DISCOVERY PROCEDURES SET FORTH IN SECTION ONE
4 THOUSAND THIRTY-EIGHT OF THIS ARTICLE SHALL BE APPLICABLE TO A PROCEED-
5 ING UNDER THIS SECTION.

6 (D) FAILURE OF A PARENT TO ASSERT A CLAIM FOR CUSTODY UNDER THIS
7 SECTION WITHIN THE SPECIFIED TIME PERIOD SHALL IRREVOCABLY FREE THE
8 CHILD FOR ADOPTION AND ANY ALLEGED PARENT WILL LOSE ALL RIGHTS AT THE
9 END OF THE NINETY DAY PERIOD WITHOUT FURTHER NOTICE.

10 S 9. Paragraph (e) of subdivision 2 of section 111 of the domestic
11 relations law, as amended by chapter 375 of the laws of 1997, is amended
12 and a new paragraph (f) is added to read as follows:

13 (e) who has executed an instrument, which shall be irrevocable, deny-
14 ing the paternity of the child, such instrument having been executed
15 after conception and acknowledged or proved in the manner required to
16 permit the recording of a deed[.]; OR

17 (F) WHERE SUCH CHILD IS DETERMINED TO BE AN ABANDONED INFANT PURSUANT
18 TO SECTION ONE THOUSAND THIRTY-ONE-A OF THE FAMILY COURT ACT.

19 S 10. This act shall take effect on the sixtieth day after it shall
20 have become a law.