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

3868--A

2009-2010 Regular Sessions

I N S E N A T E

April 2, 2009

Introduced by Sens. MONTGOMERY, HUNTLEY -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- reported favorably from said committee and committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the family court act and the social services law, in relation to restoration of parental rights

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

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

PART 1-A

MODIFICATION OF DISPOSITION; RESTORATION OF PARENTAL RIGHTS

SECTION 635. PETITION TO RESTORE PARENTAL RIGHTS.
636. ORIGINATING A PROCEEDING TO RESTORE PARENTAL RIGHTS; SERVICE AND VENUE.
637. BURDEN OF PROOF, DISPOSITION AND FINDINGS.

S 635. PETITION TO RESTORE PARENTAL RIGHTS. A PETITION TO MODIFY A DISPOSITION ORDERED PURSUANT TO SUBDIVISION (C) OF SECTION SIX HUNDRED THIRTY-ONE OF THIS ARTICLE OR PARAGRAPH (A) OF SUBDIVISION THREE OF SECTION THREE HUNDRED EIGHTY-FOUR-B OF THE SOCIAL SERVICES LAW IN ORDER TO RESTORE PARENTAL RIGHTS MAY BE FILED IN ACCORDANCE WITH THIS PART WHERE THE FOLLOWING CONDITIONS ARE MET:

(A) THE ORDER COMMITTING GUARDIANSHIP AND CUSTODY OF THE CHILD HAD BEEN ISSUED TWO OR MORE YEARS PRIOR TO THE DATE OF FILING OF THE PETITION UNDER THIS SECTION; AND

(B) THE ORDER COMMITTING GUARDIANSHIP AND CUSTODY OF THE CHILD HAD BEEN BASED UPON AN ADJUDICATION UPON GROUNDS ENUMERATED IN PARAGRAPH (B), (C) OR (D) OF SUBDIVISION FOUR OF SECTION THREE HUNDRED EIGHTY-FOUR-B OF THE SOCIAL SERVICES LAW; AND

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

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(C) THE PETITION ALLEGES THAT THE PETITIONER OR PETITIONERS AND THE RESPONDENT OR RESPONDENTS IN THE PROCEEDING IN WHICH GUARDIANSHIP AND CUSTODY HAD BEEN COMMITTED CONSENT TO THE RELIEF REQUESTED IN THE PETITION OR THAT THE PETITIONER OR PETITIONERS WITHHELD CONSENT TO THE RELIEF REQUESTED IN THE PETITION WITHOUT GOOD CAUSE; AND

(D) THE CHILD IS FOURTEEN YEARS OF AGE OR OLDER, REMAINS UNDER THE JURISDICTION OF THE FAMILY COURT, HAS NOT BEEN ADOPTED, DOES NOT HAVE A PERMANENCY GOAL OF ADOPTION AND CONSENTS TO THE RELIEF REQUESTED IN THE PETITION.

S 636. ORIGINATING A PROCEEDING TO RESTORE PARENTAL RIGHTS; SERVICE AND VENUE. (A) A PROCEEDING TO MODIFY THE DISPOSITION IN ORDER TO RESTORE PARENTAL RIGHTS MAY BE ORIGINATED BY THE FILING OF A PETITION BY THE CHILD'S ATTORNEY, BY THE AGENCY OR INDIVIDUAL TO WHOM GUARDIANSHIP AND CUSTODY OF THE CHILD HAD BEEN COMMITTED OR BY THE RESPONDENT OR RESPONDENTS IN THE TERMINATION OF PARENTAL RIGHTS PROCEEDING. THE PETITION SHALL BE SERVED UPON THE CHILD'S ATTORNEY, THE AGENCY OR INDIVIDUAL TO WHOM GUARDIANSHIP AND CUSTODY OF THE CHILD HAD BEEN COMMITTED AND THE RESPONDENT OR RESPONDENTS IN THE TERMINATION OF PARENTAL RIGHTS PROCEEDING, AS WELL AS THE ATTORNEY OR ATTORNEYS WHO REPRESENTED THE RESPONDENT OR RESPONDENTS IN THE TERMINATION OF PARENTAL RIGHTS PROCEEDING. A CERTIFIED COPY OF THE ORDER COMMITTING GUARDIANSHIP AND CUSTODY SHALL BE ATTACHED TO THE PETITION.

(B) UPON THE FILING OF A PETITION UNDER THIS PART, THE COURT MAY CAUSE A SUMMONS TO BE ISSUED TO THE CHILD, THE AGENCY OR INDIVIDUAL TO WHOM GUARDIANSHIP AND CUSTODY OF THE CHILD HAD BEEN COMMITTED AND THE RESPONDENT OR RESPONDENTS IN THE TERMINATION OF PARENTAL RIGHTS PROCEEDING. THE SUMMONS SHALL BE SERVED IN ACCORDANCE WITH SECTION SIX HUNDRED SEVENTEEN OF THIS ARTICLE, ACCOMPANIED BY A COPY OF THE PETITION AND THE CERTIFIED ORDER OF COMMITMENT SOUGHT TO BE MODIFIED.

(C) THE PETITION SHALL BE FILED BEFORE THE COURT THAT EXERCISED JURISDICTION OVER THE MOST RECENT PERMANENCY PROCEEDING INVOLVING THE CHILD AND SHALL BE ASSIGNED, WHEREVER PRACTICABLE, TO THE FAMILY COURT JUDGE WHO PRESIDED OVER THAT PROCEEDING OR THE PROCEEDING TO TERMINATE PARENTAL RIGHTS.

(D) WHEREVER PRACTICABLE, THE CHILD SHALL BE REPRESENTED BY THE SAME ATTORNEY THAT REPRESENTED THE CHILD IN THE MOST RECENT PERMANENCY PROCEEDING AND THE PARENT OR PARENTS SHALL BE REPRESENTED BY THE SAME ATTORNEY OR ATTORNEYS WHO REPRESENTED THE PARENT OR PARENTS IN THE TERMINATION OF PARENTAL RIGHTS PROCEEDING. WHERE THIS IS NOT PRACTICABLE, OR WHERE THE COURT GRANTS A REQUEST BY THE ATTORNEY OR ATTORNEYS TO BE RELIEVED, THE COURT SHALL IMMEDIATELY ASSIGN A NEW ATTORNEY OR ATTORNEYS, AS APPLICABLE.

S 637. BURDEN OF PROOF, DISPOSITION AND FINDINGS. (A) THE PETITIONER SHALL HAVE THE BURDEN OF PROOF BY CLEAR AND CONVINCING EVIDENCE THAT RESTORATION OF PARENTAL RIGHTS IS IN THE CHILD'S BEST INTERESTS, THAT THE REQUIREMENTS OF SECTION SIX HUNDRED THIRTY-FIVE OF THIS PART HAVE BEEN MET AND THAT ALL OF THE PARTIES AND THE CHILD HAVE CONSENTED OR, IF THE PETITIONER IN THE PROCEEDING IN WHICH GUARDIANSHIP AND CUSTODY HAVE BEEN COMMITTED FAILED TO CONSENT TO THE RELIEF REQUESTED, THAT SUCH FAILURE WAS WITHOUT GOOD CAUSE.

(B) THE COURT SHALL STATE ON THE RECORD THE REASON OR REASONS FOR ITS DISPOSITION OF THE PETITION. THE COURT MAY MAKE THE FOLLOWING ORDERS OF DISPOSITION:

(I) THE COURT MAY GRANT THE PETITION, MODIFY THE ORDER OF DISPOSITION PREVIOUSLY ENTERED IN THE TERMINATION OF PARENTAL RIGHTS PROCEEDING AND TRANSFER GUARDIANSHIP AND CUSTODY OF THE CHILD TO THE BIRTH PARENT OR

PARENTS, PROVIDED, HOWEVER, THAT THE FINDINGS OF FACT RENDERED PURSUANT TO SECTION SIX HUNDRED TWENTY-TWO OF THIS ARTICLE OR SUBDIVISION FOUR OF SECTION THREE HUNDRED EIGHTY-FOUR-B OF THE SOCIAL SERVICES LAW THAT FORMED THE BASIS FOR THE ADJUDICATION TERMINATING PARENTAL RIGHTS SHALL REMAIN; OR

(II) THE COURT MAY DISMISS THE PETITION, IN WHICH CASE THE COMMITMENT OF GUARDIANSHIP AND CUSTODY OF THE CHILD TO THE AUTHORIZED AGENCY OR INDIVIDUAL WOULD CONTINUE AND A PERMANENCY HEARING WOULD BE REQUIRED TO BE HELD AS SCHEDULED IN ACCORDANCE WITH ARTICLE TEN-A OF THIS ACT; OR

(III) THE COURT MAY GRANT THE PETITION CONDITIONALLY FOR A DESIGNATED PERIOD OF UP TO SIX MONTHS, DURING WHICH TIME GUARDIANSHIP AND CUSTODY OF THE CHILD SHALL REMAIN WITH THE LOCAL SOCIAL SERVICES DISTRICT OR AUTHORIZED AGENCY WHILE THE CHILD MAY VISIT WITH, OR BE PLACED ON A TRIAL DISCHARGE WITH, THE BIRTH PARENT OR PARENTS. THE COURT SHALL DIRECT THE DISTRICT OR AGENCY TO SUPERVISE THE CHILD'S BIRTH PARENT OR PARENTS, DEVELOP A REUNIFICATION PLAN AND PROVIDE APPROPRIATE TRANSITIONAL SERVICES TO THE CHILD AND BIRTH PARENT OR PARENTS AND REPORT TO THE PARTIES, ATTORNEY FOR THE CHILD AND THE COURT NOT LATER THAN THIRTY DAYS PRIOR TO THE EXPIRATION OF THE DESIGNATED PERIOD. THE COURT SHALL SCHEDULE THE PROCEEDING TO BE HEARD PRIOR TO THE EXPIRATION OF THE DESIGNATED PERIOD AND SHALL DETERMINE WHETHER TO GRANT THE PETITION PERMANENTLY IN ACCORDANCE WITH PARAGRAPH (I) OF THIS SUBDIVISION OR DISMISS THE PETITION IN ACCORDANCE WITH PARAGRAPH (II) OF THIS SUBDIVISION. THE COURT SHALL STATE ITS REASONS FOR ITS DETERMINATION. IF THE PETITION IS PERMANENTLY GRANTED, THE CHILD'S CUSTODY AND GUARDIANSHIP SHALL BE TRANSFERRED TO THE BIRTH PARENT OR PARENTS. IF THE CHILD HAS BEEN REMOVED FROM THE CUSTODY OF THE BIRTH PARENT OR PARENTS PRIOR TO THE EXPIRATION OF THE DESIGNATED PERIOD BY REASON OF A REPORT OF SUSPECTED CHILD ABUSE OR MALTREATMENT, THE COURT SHALL SCHEDULE THE PROCEEDING TO BE HEARD ON NOTICE TO THE PARTIES AND ATTORNEY FOR THE CHILD, MAY TERMINATE THE TRIAL DISCHARGE AND MAY DISMISS THE PETITION IN ACCORDANCE WITH PARAGRAPH (II) OF THIS SUBDIVISION.

S 2. Item (III) of clause (B) of subparagraph (viii) of paragraph 2 of subdivision (d) of section 1089 of the family court act, as added by section 27 of part A of chapter 3 of the laws of 2005, is amended and a new item (IV) is added to read as follows:

(III) recommend that the office of children and family services investigate the facts and circumstances concerning the discharge of responsibilities for the care and welfare of such child by a local social services district pursuant to section three hundred ninety-five of the social services law[.]; AND

(IV) RECOMMEND THAT THE ATTORNEY FOR THE CHILD, LOCAL SOCIAL SERVICES DISTRICT OR AGENCY FILE A PETITION PURSUANT TO PART ONE-A OF ARTICLE SIX OF THIS ACT TO RESTORE THE PARENTAL RIGHTS OF A CHILD WHO HAS BEEN FREED FOR ADOPTION.

S 3. The section heading of section 384-b of the social services law, as added by chapter 666 of the laws of 1976, is amended and a new subdivision 13 is added to read as follows:

Guardianship and custody of destitute or dependent children; commitment by court order; MODIFICATION OF COMMITMENT AND RESTORATION OF PARENTAL RIGHTS.

13. A PETITION TO MODIFY A DISPOSITION OF COMMITMENT OF GUARDIANSHIP AND CUSTODY IN ORDER TO RESTORE PARENTAL RIGHTS MAY BE BROUGHT IN ACCORDANCE WITH PART ONE-A OF ARTICLE SIX OF THE FAMILY COURT ACT WHERE THE CONDITIONS ENUMERATED IN SECTION SIX HUNDRED THIRTY-FIVE OF SUCH PART HAVE BEEN MET.

S 4. This act shall take effect on the ninetieth day after it shall have become a law.