

3870

2009-2010 Regular Sessions

I N S E N A T E

April 2, 2009

Introduced by Sen. MONTGOMERY -- (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

AN ACT to amend the family court act and the social services law, in relation to destitute children in child protective and permanency proceedings in the family court; and to repeal certain provisions of the family court act relating thereto

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

1 Section 1. Subdivision (c) of section 115 of the family court act, as
2 amended by section 1 of part A of chapter 3 of the laws of 2005, is
3 amended to read as follows:

4 (c) The family court has such other jurisdiction as is provided by
5 law, including but not limited to: proceedings concerning adoption and
6 custody of children, as set forth in parts two and three of article six
7 of this act; proceedings concerning the uniform interstate family
8 support act, as set forth in article five-B of this act; proceedings
9 concerning children in foster care and care and custody of children, as
10 set forth in sections three hundred fifty-eight-a and three hundred
11 eighty-four-a of the social services law and article ten-A of this act;
12 proceedings concerning DESTITUTE CHILDREN, AS SET FORTH IN ARTICLES TEN
13 AND TEN-A OF THIS ACT; PROCEEDINGS CONCERNING guardianship and custody
14 of children by reason of the death of, or abandonment or surrender by,
15 the parent or parents, as set forth in sections three hundred eighty-
16 three-c, three hundred eighty-four and paragraphs (a) and (b) of subdi-
17 vision four of section three hundred eighty-four-b of the social
18 services law; proceedings concerning standby guardianship and guardian-
19 ship of the person as set forth in part four of article six of this act
20 and article seventeen of the surrogate's court procedure act; and
21 proceedings concerning the interstate compact on juveniles as set forth
22 in chapter one hundred fifty-five of the laws of nineteen hundred

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

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1 fifty-five, as amended, the interstate compact on the placement of chil-
2 dren, as set forth in section three hundred seventy-four-a of the social
3 services law, and the uniform child custody jurisdiction and enforcement
4 act, as set forth in article five-A of the domestic relations law.

5 S 2. Paragraph (ii) of subdivision (f) of section 1012 of the family
6 court act, as amended by chapter 666 of the laws of 1976, is amended and
7 a new paragraph (iii) is added to read as follows:

8 (ii) who has been abandoned, in accordance with the definition and
9 other criteria set forth in subdivision five of section three hundred
10 eighty-four-b of the social services law, by his parents or other person
11 legally responsible for his care[.]; OR

12 (III) WHO IS DESTITUTE, AS DEFINED IN SUBDIVISION THREE OF SECTION
13 THREE HUNDRED SEVENTY-ONE OF THE SOCIAL SERVICES LAW.

14 S 3. Subdivision (a) of section 1013 of the family court act, as added
15 by chapter 962 of the laws of 1970, is amended to read as follows:

16 (a) The family court has exclusive original jurisdiction over
17 proceedings under this article alleging [the abuse or neglect of] THAT a
18 child IS ABUSED, NEGLECTED OR DESTITUTE.

19 S 4. The section heading and the opening paragraph of section 1016 of
20 the family court act, as added by chapter 319 of the laws of 1990, are
21 amended to read as follows:

22 Appointment of [law guardian] ATTORNEY FOR THE CHILD. The court shall
23 appoint [a law guardian] AN ATTORNEY to represent a child who has been
24 allegedly abused or neglected OR IS ALLEGED TO BE DESTITUTE upon the
25 earliest occurrence of any of the following: (i) the court receiving
26 notice, pursuant to paragraph (iv) of subdivision (b) of section [ten
27 hundred] ONE THOUSAND twenty-four of this act, of the emergency removal
28 of the child; (ii) an application for an order for removal of the child
29 prior to the filing of a petition, pursuant to section one thousand
30 twenty-two of this act; or (iii) the filing of a petition alleging
31 [abuse or neglect] THAT THE CHILD IS ABUSED, NEGLECTED OR DESTITUTE
32 pursuant to this article.

33 S 5. Section 1021 of the family court act, as amended by section 12 of
34 part A of chapter 3 of the laws of 2005, is amended to read as follows:

35 S 1021. Temporary removal with consent. A peace officer, acting pursu-
36 ant to his or her special duties, or a police officer or an agent of a
37 duly authorized agency, association, society or institution may tempo-
38 rarily remove a child from the place where he or she is residing with
39 the written consent of his or her parent or other person legally respon-
40 sible for his or her care, if the child is suspected to be an abused
41 [or], neglected OR DESTITUTE child under this article. The officer or
42 agent shall, coincident with consent or removal, give written notice to
43 the parent or other person legally responsible for the child's care of
44 the right to apply to the family court for the return of the child
45 pursuant to section one thousand twenty-eight of this article, and of
46 the right to be represented by counsel and the procedures for those who
47 are indigent to obtain counsel in proceedings brought pursuant to this
48 article. Such notice shall also include the name, title, organization,
49 address and telephone number of the person removing the child; the name,
50 address and telephone number of the authorized agency to which the child
51 will be taken, if available; and the telephone number of the person to
52 be contacted for visits with the child. A copy of the instrument whereby
53 the parent or legally responsible person has given such consent to such
54 removal shall be appended to the petition alleging [abuse or neglect of]
55 THAT the removed child IS ABUSED, NEGLECTED OR DESTITUTE and made a part
56 of the permanent court record of the proceeding. A copy of such instru-

1 ment and notice of the telephone number of the child protective agency
2 to contact to ascertain the date, time and place of the filing of the
3 petition and of the hearing that will be held pursuant to section one
4 thousand twenty-seven of this article shall be given to the parent or
5 legally responsible person. Unless the child is returned sooner, a peti-
6 tion shall be filed within three court days from the date of removal. In
7 such a case, a hearing shall be held no later than the next court day
8 after the petition is filed and findings shall be made as required
9 pursuant to section one thousand twenty-seven of this article.

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

13 (a) If facts sufficient to sustain the petition are established in
14 accord with part four of this article, or if all parties and the [law
15 guardian] ATTORNEY FOR THE CHILD consent, the court shall, subject to
16 the provisions of subdivision (c) of this section, enter an order find-
17 ing that the child is an abused child [or], a neglected child OR A
18 DESTITUTE CHILD and shall state the grounds for the finding.

19 S 7. Subdivision (c) of section 1051 of the family court act, as
20 amended by chapter 187 of the laws of 1990, is amended to read as
21 follows:

22 (c) If facts sufficient to sustain the petition under this article are
23 not established, or if, in a case of A CHILD alleged [neglect] TO BE
24 NEGLECTED OR DESTITUTE, the court concludes that its aid is not required
25 on the record before it, the court shall dismiss the petition and shall
26 state on the record the grounds for the dismissal.

27 S 8. Subdivision (d) of section 1051 of the family court act, as
28 amended by chapter 478 of the laws of 1988, is amended to read as
29 follows:

30 (d) If the court makes a finding [of abuse or neglect] THAT A CHILD
31 HAS BEEN ABUSED OR NEGLECTED OR IS DESTITUTE, it shall determine, based
32 upon the facts adduced during the fact-finding hearing and any other
33 additional facts presented to it, whether a preliminary order pursuant
34 to section one thousand twenty-seven is required to protect the child's
35 interests pending a final order of disposition. The court shall state
36 the grounds for its determination. In addition, a child found to be
37 abused [or], neglected OR DESTITUTE may be removed and remanded to a
38 place approved for such purpose by the local social services department
39 or be placed in the custody of a suitable person, pending a final order
40 of disposition, if the court finds that there is a substantial probabil-
41 ity that the final order of disposition will be an order of placement
42 under section one thousand fifty-five OF THIS ARTICLE. In determining
43 whether substantial probability exists, the court shall consider the
44 requirements of subdivision (b) of section one thousand fifty-two OF
45 THIS ARTICLE.

46 S 9. Section 1059 of the family court act is REPEALED.

47 S 10. Subdivision 1 of section 398 of the social services law is
48 amended to read as follows:

49 1. As to destitute children: Assume charge of and provide CARE AND
50 support for any destitute child who cannot be properly cared for in his
51 OR HER home, AS PROVIDED IN SUBDIVISION TWO OF THIS SECTION AND AS
52 ORDERED BY THE FAMILY COURT PURSUANT TO ARTICLES TEN AND TEN-A OF THE
53 FAMILY COURT ACT.

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

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

2 (a) Investigate [the] ANY alleged neglect, abuse, DESTITUTE or aban-
3 donment of a child, offer protective social services to prevent injury
4 to the child, to safeguard his OR HER welfare[,] and to preserve and
5 stabilize family life wherever possible, and, if necessary, [bring the
6 case before] PROMPTLY PETITION the family court for adjudication and
7 care for the child [until the court acts in the matter and, in the case
8 of an abandoned child, shall promptly petition the family court to
9 obtain custody of such child].

10 S 12. Paragraph (b) of subdivision 2 of section 398 of the social
11 services law, as amended by chapter 555 of the laws of 1978, is amended
12 to read as follows:

13 (b) Receive and care for any child alleged to be neglected, abused
14 [or], abandoned OR DESTITUTE, who is temporarily placed in [his] THE
15 care OF THE LOCAL COMMISSIONER by the family court pending adjudication
16 by such court of the alleged neglect, abuse [or], abandonment OR FINDING
17 THAT THE CHILD IS A DESTITUTE CHILD, including the authority to estab-
18 lish, operate, maintain and approve facilities for such purpose in
19 accordance with the regulations of the [department] OFFICE OF CHILDREN
20 AND FAMILY SERVICES; and receive and care for any neglected, abused
21 [or], abandoned OR DESTITUTE child placed [or discharged to his] IN THE
22 care OF THE LOCAL COMMISSIONER by the family court.

23 S 13. This act shall take effect immediately.

REPEAL NOTE: Section 1059, proposed to be repealed by this act,
provides that children found to be abandoned are to be discharged to the
custody of the local commissioner of social services, who shall care for
them as destitute children and institute proceedings to terminate
parental rights.