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

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:

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

(c) The family court has such other jurisdiction as is provided by law, including but not limited to: proceedings concerning adoption and custody of children, as set forth in parts two and three of article six of this act; proceedings concerning the uniform interstate family support act, as set forth in article five-B of this act; proceedings concerning children in foster care and care and custody of children, as set forth in sections three hundred fifty-eight-a and three hundred eighty-four-a of the social services law and article ten-A of this act; proceedings concerning DESTITUTE CHILDREN, AS SET FORTH IN ARTICLES TEN AND TEN-A OF THIS ACT; PROCEEDINGS CONCERNING guardianship and custody of children by reason of the death of, or abandonment or surrender by, the parent or parents, as set forth in sections three hundred eighty-three-c, three hundred eighty-four and paragraphs (a) and (b) of subdivision four of section three hundred eighty-four-b of the social services law; proceedings concerning standby guardianship and guardianship of the person as set forth in part four of article six of this act and article seventeen of the surrogate's court procedure act; and proceedings concerning the interstate compact on juveniles as set forth 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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fifty-five, as amended, the interstate compact on the placement of children, as set forth in section three hundred seventy-four-a of the social services law, and the uniform child custody jurisdiction and enforcement act, as set forth in article five-A of the domestic relations law.

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

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

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

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

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

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

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

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

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

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

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 in accord with part four of this article, or if all parties and the [law guardian] ATTORNEY FOR THE CHILD 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 OR A DESTITUTE CHILD and shall state the grounds for the finding.

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

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

S 8. 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] THAT A CHILD HAS BEEN ABUSED OR NEGLECTED OR IS DESTITUTE, 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 OR DESTITUTE 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 OF THIS ARTICLE. In determining whether substantial probability exists, the court shall consider the requirements of subdivision (b) of section one thousand fifty-two OF THIS ARTICLE.

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

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

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

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

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

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

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

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

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.