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

3880

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 Children and Family Services) -- read twice and ordered printed, and when printed to be committed 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:

Section 1. Subdivision 3 of section 371 of the social services law, as amended by chapter 722 of the laws of 1978, is amended to read as follows:

3. "Destitute child" means a child who[, through no neglect on the part of its parent, guardian or custodian, is

(a) destitute or homeless, or

(b)] IS NOT SUBJECT TO ARTICLE TEN OF THE FAMILY COURT ACT; IS UNACCOMPANIED BY A PARENT OR OTHER LEGALLY RESPONSIBLE ADULT; AND IS EITHER in a state of want or suffering due to lack of sufficient food, clothing, [or] shelter, or medical or surgical care, or

[(c) a person under the age of eighteen years who is absent from his legal residence without the consent of his parent, legal guardian or custodian, or

(d) a person under the age of eighteen who] is without a place of shelter where APPROPRIATE supervision and care are available.

S 2. Subdivision 3 of section 374-b of the social services law, as added by chapter 160 of the laws of 2004, is amended to read as follows:

3. An authorized agency that has received approval from the office of children and family services may operate a supervised independent living program, as defined in section three hundred seventy-one of this title. The office of children and family services shall promulgate regulations

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

LBD07445-02-9

establishing the standards for approval and operation of supervised independent living programs. AN AUTHORIZED AGENCY SHALL NOT BE REQUIRED TO NOTIFY THE MUNICIPALITY IN ACCORDANCE WITH SUBDIVISION TWO OF THIS SECTION WHEN ESTABLISHING A SUPERVISED INDEPENDENT LIVING PROGRAM OR A SUPERVISED INDEPENDENT LIVING UNIT.

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 to read as follows:

Guardianship and custody of destitute or dependent children; commitment by court order; VACATUR OF COMMITMENT.

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

13. A PETITION TO VACATE AN ORDER OF DISPOSITION COMMITTING THE GUARDIANSHIP AND CUSTODY OF A CHILD WHOSE PARENTAL RIGHTS HAVE BEEN TERMINATED MAY BE BROUGHT IN ACCORDANCE WITH PART ONE-A OF ARTICLE SIX OF THE FAMILY COURT ACT.

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

S 384-D. CARE AND CUSTODY OF DESTITUTE CHILDREN. 1. INITIATION OF JUDICIAL PROCEEDING. A SOCIAL SERVICES COMMISSIONER SHALL, WITHIN FOURTEEN DAYS OF ACCEPTING THE CARE AS A PUBLIC CHARGE OF A CHILD WHO APPEARS TO BE A DESTITUTE CHILD, FILE A PETITION IN THE FAMILY COURT ALLEGING THAT THE CHILD IS A DESTITUTE CHILD AND REQUESTING THAT THE COURT PLACE THE CHILD IN THE TEMPORARY CARE AND CUSTODY OF SUCH COMMISSIONER WHILE AN INVESTIGATION IS COMMENCED TO DETERMINE WHETHER THE CHILD IS AN ABUSED OR NEGLECTED CHILD SUBJECT TO THE PROVISIONS OF ARTICLE TEN OF THE FAMILY COURT ACT OR A DESTITUTE CHILD AS DEFINED IN SUBDIVISION THREE OF SECTION THREE HUNDRED SEVENTY-ONE OF THIS TITLE.

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

3. INITIAL APPEARANCE. AT THE INITIAL APPEARANCE:

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

(B) THE COURT SHALL DETERMINE WHETHER PLACEMENT OF THE CHILD IN TEMPORARY CARE AND CUSTODY OF THE LOCAL COMMISSIONER IS IN THE BEST INTERESTS OF THE CHILD; WHETHER IT WOULD BE CONTRARY TO THE WELFARE OF THE CHILD TO CONTINUE IN HIS OR HER OWN HOME; THAT, WHERE APPROPRIATE, REASONABLE EFFORTS WERE MADE PRIOR TO THE PLACEMENT OF THE CHILD INTO FOSTER CARE TO PREVENT REMOVAL OF THE CHILD FROM HIS OR HER HOME; AND THAT PRIOR TO THE INITIATION OF THE COURT PROCEEDING REQUIRED TO BE HELD BY THIS SUBDIVISION, REASONABLE EFFORTS WERE MADE TO MAKE IT POSSIBLE FOR THE CHILD TO RETURN SAFELY HOME. THE COURT SHALL INCLUDE SUCH FINDINGS IN

ITS ORDER. IF THE COURT DETERMINES THAT REASONABLE EFFORTS TO PREVENT THE NEED FOR REMOVAL OF THE CHILD FROM THE HOME WERE NOT MADE BUT THAT THE LACK OF SUCH EFFORTS WAS APPROPRIATE UNDER THE CIRCUMSTANCES, THE COURT ORDER SHALL INCLUDE SUCH FINDINGS.

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

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

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

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

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

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

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

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

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

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

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

6. DISPOSITION AND ORDER. IF THE COURT DETERMINES THAT THE CHILD IS A DESTITUTE CHILD WITHIN THE MEANING OF SECTION THREE HUNDRED SEVENTY-ONE OF THIS TITLE, THE COURT SHALL ISSUE AN ORDER PLACING THE CHILD IN THE CARE AND CUSTODY OF THE LOCAL COMMISSIONER. SUCH ORDER SHALL CONTAIN THE DATE CERTAIN PREVIOUSLY SET FOR THE INITIAL PERMANENCY HEARING. CHILDREN PLACED UNDER THIS SECTION SHALL BE PLACED UNTIL THE COURT COMPLETES THE INITIAL PERMANENCY HEARING. SHOULD THE COURT DETERMINE THAT PLACEMENT WILL CONTINUE BEYOND COMPLETION OF THE INITIAL PERMANENCY HEARING, SUBSEQUENT PERMANENCY HEARINGS SHALL BE SCHEDULED PURSUANT TO PARAGRAPH TWO OF SUBDIVISION (A) OF SECTION ONE THOUSAND EIGHTY-NINE OF THE FAMILY COURT ACT.

S 6. 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, AND FILE A PETITION TO OBTAIN CUSTODY OF SUCH CHILD PURSUANT TO SECTION THREE HUNDRED EIGHTY-FOUR-D OF THIS ARTICLE.

S 7. 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 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 the family court for adjudication and care for the child until the court acts in the matter; and, in the case of an abandoned OR DESTITUTE child, [shall] promptly petition the family court to obtain custody of such child.

S 8. 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] THE care OF THE LOCAL COMMISSIONER by the family court.

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

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

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

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

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

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;

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

(C) THE CHILD IS FOURTEEN YEARS OF AGE OR OLDER, IS UNDER THE JURISDICTION OF THE FAMILY COURT, HAS NOT BEEN ADOPTED AND NO ADOPTION PROCEEDING IS PENDING, AND IF THE CHILD'S ATTORNEY IS NOT THE PETITIONER, THE CHILD CONSENTS TO THE FILING OF THE PETITION BY AFFIRMATION; AND

(D) IF THE RESPONDENT OR RESPONDENTS WHOSE PARENTAL RIGHTS THE PETITION SEEKS TO REINSTATE IS NOT THE PETITIONER, SUCH RESPONDENT OR RESPONDENTS CONSENTS OR CONSENT TO THE FILING OF THE PETITION BY AFFIRMATION.

S 636. ORIGINATING A PROCEEDING TO VACATE A COMMITMENT OF GUARDIANSHIP AND CUSTODY AND REINSTATE PARENTAL RIGHTS; SERVICE AND VENUE. (A) A PROCEEDING TO VACATE THE ORDER OF DISPOSITION COMMITTING GUARDIANSHIP AND CUSTODY OF A CHILD TO AN AUTHORIZED AGENCY AND REINSTATE PARENTAL RIGHTS SHALL BE ORIGINATED BY A PETITION FILED BY THE CHILD'S LAW GUARDIAN, THE AUTHORIZED AGENCY TO WHOSE GUARDIANSHIP AND CUSTODY THE CHILD WAS COMMITTED, OR THE RESPONDENT OR RESPONDENTS WHOSE PARENTAL RIGHTS THE PETITION SEEKS TO REINSTATE.

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

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

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

(E) A PETITION BROUGHT PURSUANT TO THIS PART SHALL BE FILED WITH 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 FOR THE TERMINATION OF PARENTAL RIGHTS.

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

S 637. BURDEN OF PROOF AND FINDINGS. THE PETITIONER SHALL HAVE THE BURDEN OF PROOF BY CLEAR AND CONVINCING EVIDENCE THAT VACATUR OF THE ORDER OF DISPOSITION COMMITTING GUARDIANSHIP AND CUSTODY OF THE CHILD TO THE AUTHORIZED AGENCY AND REINSTATEMENT OF PARENTAL RIGHTS IS IN THE CHILD'S BEST INTERESTS AND THAT THE NECESSARY PARTIES CONSENT TO SUCH VACATUR AND REINSTATEMENT AS REQUIRED BY SECTION SIX HUNDRED THIRTY-FIVE OF THIS PART. IN DETERMINING WHETHER THE BURDEN OF PROOF HAS BEEN MET, THE COURT SHALL TAKE INTO ACCOUNT THE FOLLOWING FACTORS:

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

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

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

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

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

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

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

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

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

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

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

(a) "Child" shall mean a person under the age of eighteen who is placed in foster care pursuant to section three hundred fifty-eight-a, three hundred eighty-four [or], three hundred eighty-four-a OR THREE HUNDRED EIGHTY-FOUR-D of the social services law or pursuant to section one thousand twenty-two, one thousand twenty-seven, or one thousand fifty-two of this act; or directly placed with a relative pursuant to section one thousand seventeen or one thousand fifty-five of this act;

or who has been freed for adoption or a person between the ages of eighteen and twenty-one who has consented to continuation in foster care.

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

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

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

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

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

(a) If a law guardian for the child has been appointed by the family court in a proceeding pursuant to 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 article ten of this act, the appointment of the law guardian shall continue without further court order or appointment, unless another appointment of a law guardian has been made by the court, until the child is discharged from placement and all orders regarding supervision, protection or services have expired. All notices, reports and motions required by law shall be provided to such law guardian. The law guardian may be relieved of his or her representation upon application to the court for termination of the appointment. Upon approval of the application, the court shall immediately appoint another law guardian to whom all notices, reports, and motions required by law shall be provided.

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