

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:

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

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

6 (a) destitute or homeless, or

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

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

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

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

18 3. An authorized agency that has received approval from the office of  
19 children and family services may operate a supervised independent living  
20 program, as defined in section three hundred seventy-one of this title.  
21 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.

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

6 S 3. The section heading of section 384-b of the social services law,  
7 as added by chapter 666 of the laws of 1976, is amended to read as  
8 follows:

9 Guardianship and custody of destitute or dependent children; commit-  
10 ment by court order; VACATUR OF COMMITMENT.

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

13 13. A PETITION TO VACATE AN ORDER OF DISPOSITION COMMITTING THE GUAR-  
14 DIANSHIP AND CUSTODY OF A CHILD WHOSE PARENTAL RIGHTS HAVE BEEN TERMI-  
15 NATED MAY BE BROUGHT IN ACCORDANCE WITH PART ONE-A OF ARTICLE SIX OF THE  
16 FAMILY COURT ACT.

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

19 S 384-D. CARE AND CUSTODY OF DESTITUTE CHILDREN. 1. INITIATION OF  
20 JUDICIAL PROCEEDING. A SOCIAL SERVICES COMMISSIONER SHALL, WITHIN FOUR-  
21 TEEN DAYS OF ACCEPTING THE CARE AS A PUBLIC CHARGE OF A CHILD WHO  
22 APPEARS TO BE A DESTITUTE CHILD, FILE A PETITION IN THE FAMILY COURT  
23 ALLEGING THAT THE CHILD IS A DESTITUTE CHILD AND REQUESTING THAT THE  
24 COURT PLACE THE CHILD IN THE TEMPORARY CARE AND CUSTODY OF SUCH COMMIS-  
25 SIONER WHILE AN INVESTIGATION IS COMMENCED TO DETERMINE WHETHER THE  
26 CHILD IS AN ABUSED OR NEGLECTED CHILD SUBJECT TO THE PROVISIONS OF ARTI-  
27 CLE TEN OF THE FAMILY COURT ACT OR A DESTITUTE CHILD AS DEFINED IN  
28 SUBDIVISION THREE OF SECTION THREE HUNDRED SEVENTY-ONE OF THIS TITLE.

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

46 3. INITIAL APPEARANCE. AT THE INITIAL APPEARANCE:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 S 6. Subdivision 1 of section 398 of the social services law is  
55 amended to read as follows:

1 1. As to destitute children: Assume charge of, and provide CARE AND  
2 support for, any destitute child who cannot be properly cared for in his  
3 OR HER home, AND FILE A PETITION TO OBTAIN CUSTODY OF SUCH CHILD PURSU-  
4 ANT TO SECTION THREE HUNDRED EIGHTY-FOUR-D OF THIS ARTICLE.

5 S 7. The opening paragraph and paragraph (a) of subdivision 2 of  
6 section 398 of the social services law, as amended by chapter 880 of the  
7 laws of 1976, are amended to read as follows:

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

9 (a) Investigate [the] ANY alleged neglect, abuse or abandonment of a  
10 child[,] offer protective social services to prevent injury to the  
11 child, to safeguard his OR HER welfare, and to preserve and stabilize  
12 family life wherever possible [and,]; if necessary, bring the case  
13 before the family court for adjudication and care for the child until  
14 the court acts in the matter; and, in the case of an abandoned OR DESTI-  
15 TUTE child, [shall] promptly petition the family court to obtain custody  
16 of such child.

17 S 8. Paragraph (b) of subdivision 2 of section 398 of the social  
18 services law, as amended by chapter 555 of the laws of 1978, is amended  
19 to read as follows:

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

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

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

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

41 S 11. Section 398-e of the social services law, as amended by chapter  
42 584 of the laws of 2008, is amended to read as follows:

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

52 S 12. Subdivision (a) of section 249 of the family court act, as  
53 amended by section 2 of part A of chapter 3 of the laws of 2005, is  
54 amended to read as follows:

55 (a) In a proceeding under article three, seven, ten or ten-A of this  
56 act or where a revocation of an adoption consent is opposed under

1 section one hundred fifteen-b of the domestic relations law or in any  
 2 proceeding under section three hundred fifty-eight-a, three hundred  
 3 eighty-three-c, three hundred eighty-four [or], three hundred eighty-  
 4 four-b, OR THREE HUNDRED EIGHTY-FOUR-D of the social services law or  
 5 when a minor is sought to be placed in protective custody under section  
 6 one hundred fifty-eight of this act, the family court shall appoint a  
 7 law guardian to represent a minor who is the subject of the proceeding  
 8 or who is sought to be placed in protective custody, if independent  
 9 legal representation is not available to such minor. In any proceeding  
 10 to extend or continue the placement of a juvenile delinquent or person  
 11 in need of supervision pursuant to section seven hundred fifty-six or  
 12 353.3 of this act or any proceeding to extend or continue a commitment  
 13 to the custody of the commissioner of mental health or the commissioner  
 14 of mental retardation and developmental disabilities pursuant to section  
 15 322.2 of this act, the court shall not permit the respondent to waive  
 16 the right to be represented by counsel chosen by the respondent,  
 17 respondent's parent, or other person legally responsible for the  
 18 respondent's care, or by a law guardian. In any other proceeding in  
 19 which the court has jurisdiction, the court may appoint a law guardian  
 20 to represent the child, when, in the opinion of the family court judge,  
 21 such representation will serve the purposes of this act, if independent  
 22 legal counsel is not available to the child. The family court on its own  
 23 motion may make such appointment.

24 S 13. Article 6 of the family court act is amended by adding a new  
 25 part 1-A to read as follows:

26 PART 1-A

27 VACATUR OF COMMITMENT OF GUARDIANSHIP AND CUSTODY;

28 REINSTATEMENT OF PARENTAL RIGHTS

29 SECTION 635. PETITION TO VACATE AN ORDER OF DISPOSITION COMMITTING THE  
 30 GUARDIANSHIP AND CUSTODY OF A CHILD TO AN AUTHORIZED  
 31 AGENCY AND REINSTATE PARENTAL RIGHTS.

32 636. ORIGINATING A PROCEEDING TO VACATE A COMMITMENT OF GUARDI-  
 33 ANSHIP AND CUSTODY AND REINSTATE PARENTAL RIGHTS; SERVICE  
 34 AND VENUE.

35 637. BURDEN OF PROOF AND FINDINGS.

36 638. DISPOSITION.

37 639. EFFECT OF ORDER.

38 S 635. PETITION TO VACATE AN ORDER OF DISPOSITION COMMITTING THE GUAR-  
 39 DIANSHIP AND CUSTODY OF A CHILD TO AN AUTHORIZED AGENCY AND REINSTATE  
 40 PARENTAL RIGHTS. VACATUR OF AN ORDER COMMITTING THE GUARDIANSHIP AND  
 41 CUSTODY OF A CHILD TO AN AUTHORIZED AGENCY SO AS TO REINSTATE THE RIGHTS  
 42 OF A PARENT OR PARENTS IS AN EXTRAORDINARY REMEDY THAT MAY BE REQUESTED  
 43 BY THE ATTORNEY FOR THE CHILD, THE AUTHORIZED AGENCY TO WHOSE GUARDIAN-  
 44 SHIP AND CUSTODY THE CHILD IS COMMITTED, OR THE RESPONDENT OR RESPOND-  
 45 ENTS WHOSE PARENTAL RIGHTS THE PETITION WOULD SEEK TO REINSTATE, WHERE  
 46 THE FOLLOWING CONDITIONS ARE MET:

47 (A) THE GUARDIANSHIP AND CUSTODY OF A CHILD WAS COMMITTED TO THE  
 48 AUTHORIZED AGENCY OR INDIVIDUAL AT LEAST THREE YEARS PRIOR TO THE DATE  
 49 OF THE FILING OF THE PETITION FOR VACATUR;

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

53 (C) THE CHILD IS FOURTEEN YEARS OF AGE OR OLDER, IS UNDER THE JURIS-  
 54 DICTION OF THE FAMILY COURT, HAS NOT BEEN ADOPTED AND NO ADOPTION  
 55 PROCEEDING IS PENDING, AND IF THE CHILD'S ATTORNEY IS NOT THE PETITION-  
 56 ER, THE CHILD CONSENTS TO THE FILING OF THE PETITION BY AFFIRMATION; AND

1 (D) IF THE RESPONDENT OR RESPONDENTS WHOSE PARENTAL RIGHTS THE PETI-  
2 TION SEEKS TO REINSTATE IS NOT THE PETITIONER, SUCH RESPONDENT OR  
3 RESPONDENTS CONSENTS OR CONSENT TO THE FILING OF THE PETITION BY AFFIR-  
4 MATION.

5 S 636. ORIGINATING A PROCEEDING TO VACATE A COMMITMENT OF GUARDIANSHIP  
6 AND CUSTODY AND REINSTATE PARENTAL RIGHTS; SERVICE AND VENUE. (A) A  
7 PROCEEDING TO VACATE THE ORDER OF DISPOSITION COMMITTING GUARDIANSHIP  
8 AND CUSTODY OF A CHILD TO AN AUTHORIZED AGENCY AND REINSTATE PARENTAL  
9 RIGHTS SHALL BE ORIGINATED BY A PETITION FILED BY THE CHILD'S LAW GUARD-  
10 IAN, THE AUTHORIZED AGENCY TO WHOSE GUARDIANSHIP AND CUSTODY THE CHILD  
11 WAS COMMITTED, OR THE RESPONDENT OR RESPONDENTS WHOSE PARENTAL RIGHTS  
12 THE PETITION SEEKS TO REINSTATE.

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

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

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

31 (E) A PETITION BROUGHT PURSUANT TO THIS PART SHALL BE FILED WITH THE  
32 COURT THAT EXERCISED JURISDICTION OVER THE MOST RECENT PERMANENCY  
33 PROCEEDING INVOLVING THE CHILD AND SHALL BE ASSIGNED, WHEREVER PRACTICA-  
34 BLE, TO THE FAMILY COURT JUDGE WHO PRESIDED OVER THAT PROCEEDING OR THE  
35 PROCEEDING FOR THE TERMINATION OF PARENTAL RIGHTS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 (a) If a law guardian for the child has been appointed by the family  
55 court in a proceeding pursuant to section three hundred fifty-eight-a,  
56 three hundred eighty-three-c, three hundred eighty-four, [or] three

1 hundred eighty-four-b, OR THREE HUNDRED EIGHTY-FOUR-D of the social  
2 services law, or article ten of this act, the appointment of the law  
3 guardian shall continue without further court order or appointment,  
4 unless another appointment of a law guardian has been made by the court,  
5 until the child is discharged from placement and all orders regarding  
6 supervision, protection or services have expired. All notices, reports  
7 and motions required by law shall be provided to such law guardian. The  
8 law guardian may be relieved of his or her representation upon applica-  
9 tion to the court for termination of the appointment. Upon approval of  
10 the application, the court shall immediately appoint another law guardi-  
11 an to whom all notices, reports, and motions required by law shall be  
12 provided.

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