

7836

2011-2012 Regular Sessions

I N A S S E M B L Y

May 19, 2011

Introduced by M. of A. PAULIN, JAFFEE, SCARBOROUGH, GALEF, GUNTHER, MILLMAN, P. RIVERA, ROBERTS, SPANO -- Multi-Sponsored by -- M. of A. CAMARA, GOTTFRIED, HOOPER, McENENY, MOYA, SIMOTAS -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Children and Families

AN ACT to amend the family court act and the social services law, in relation to procedures for destitute children in the family court; to repeal section 1059 of the family court act, relating to abandoned children, to repeal subdivision (a) of section 1090 of the family court act relating to permanency hearings for children placed outside their homes; and to repeal paragraph (i) of subdivision 6 of section 398 of the social services law relating to providing care in an institution

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 PERMANENCY PROCEEDINGS AS SET FORTH IN ARTICLE TEN-A OF THIS ACT;
13 proceedings concerning FORMER FOSTER CHILDREN AS SET FORTH IN ARTICLE
14 TEN-B OF THIS ACT; PROCEEDINGS CONCERNING DESTITUTE CHILDREN, AS SET
15 FORTH IN ARTICLE TEN-C OF THIS ACT; PROCEEDINGS CONCERNING guardianship
16 and custody of children by reason of the death of, or abandonment or

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

A

LBD11155-01-1

1 surrender by, the parent or parents, as set forth in sections three
2 hundred eighty-three-c, three hundred eighty-four and paragraphs (a) and
3 (b) of subdivision four of section three hundred eighty-four-b of the
4 social services law; proceedings concerning standby guardianship and
5 guardianship of the person as set forth in part four of article six of
6 this act and article seventeen of the surrogate's court procedure act;
7 and proceedings concerning the interstate compact on juveniles as set
8 forth in chapter one hundred fifty-five of the laws of nineteen hundred
9 fifty-five, as amended, the interstate compact on the placement of chil-
10 dren, as set forth in section three hundred seventy-four-a of the social
11 services law, and the uniform child custody jurisdiction and enforcement
12 act, as set forth in article five-A of the domestic relations law.

13 S 2. Subdivision (a) of section 249 of the family court act, as
14 amended by chapter 41 of the laws of 2010, is amended to read as
15 follows:

16 (a) In a proceeding under article three, seven, ten [or], ten-A, TEN-B
17 OR TEN-C of this act or where a revocation of an adoption consent is
18 opposed under section one hundred fifteen-b of the domestic relations
19 law or in any proceeding under section three hundred fifty-eight-a,
20 three hundred eighty-three-c, three hundred eighty-four or three hundred
21 eighty-four-b of the social services law or when a minor is sought to be
22 placed in protective custody under section one hundred fifty-eight of
23 this act, the family court shall appoint an attorney to represent a
24 minor who is the subject of the proceeding or who is sought to be placed
25 in protective custody, if independent legal representation is not avail-
26 able to such minor. In any proceeding to extend or continue the place-
27 ment of a juvenile delinquent or person in need of supervision pursuant
28 to section seven hundred fifty-six or 353.3 of this act or any proceed-
29 ing to extend or continue a commitment to the custody of the commission-
30 er of mental health or the commissioner of [mental retardation and]
31 developmental disabilities pursuant to section 322.2 of this act, the
32 court shall not permit the respondent to waive the right to be repres-
33 ented by counsel chosen by the respondent, respondent's parent, or other
34 person legally responsible for the respondent's care, or by assigned
35 counsel. In any other proceeding in which the court has jurisdiction,
36 the court may appoint an attorney to represent the child, when, in the
37 opinion of the family court judge, such representation will serve the
38 purposes of this act, if independent legal counsel is not available to
39 the child. The family court on its own motion may make such appointment.

40 S 3. Paragraphs (i) and (iv) of subdivision (a) of section 262 of the
41 family court act, paragraph (i) as amended by section 3 of part A of
42 chapter 3 of the laws of 2005 and paragraph (iv) as amended by chapter
43 437 of the laws of 2006, are amended to read as follows:

44 (i) the respondent in any proceeding under article ten [or], article
45 ten-A OR ARTICLE TEN-C of this act and the petitioner in any proceeding
46 under part eight of article ten of this act;

47 (iv) the parent OR OTHER PERSON LEGALLY RESPONSIBLE, foster parent, or
48 other person having physical or legal custody of the child in any
49 proceeding under article ten [or], ten-A, TEN-B OR TEN-C of this act or
50 section three hundred fifty-eight-a, three hundred eighty-four or three
51 hundred eighty-four-b of the social services law, and a non-custodial
52 parent or grandparent served with notice pursuant to paragraph (e) of
53 subdivision two of section three hundred eighty-four-a of the social
54 services law;

55 S 4. Section 1059 of the family court act is REPEALED.

1 S 5. Section 1086 of the family court act, as added by section 27 of
2 part A of chapter 3 of the laws of 2005, is amended to read as follows:

3 S 1086. Purpose. The purpose of this article is to establish uniform
4 procedures for permanency hearings for all children who are placed in
5 foster care pursuant to section three hundred fifty-eight-a, three
6 hundred eighty-four or three hundred eighty-four-a of the social
7 services law or pursuant to section one thousand twenty-two, one thou-
8 sand twenty-seven, [or] one thousand fifty-two, ONE THOUSAND
9 EIGHTY-NINE, ONE THOUSAND NINETY-ONE, ONE THOUSAND NINETY-FOUR OR ONE
10 THOUSAND NINETY-FIVE of this act; children who are directly placed with
11 a relative pursuant to section one thousand seventeen or one thousand
12 fifty-five of this act; and children who are freed for adoption. It is
13 meant to provide children placed out of their homes timely and effective
14 judicial review that promotes permanency, safety and well-being in their
15 lives.

16 S 6. Subdivision (a) of section 1087 of the family court act, as
17 amended by chapter 342 of the laws of 2010, is amended to read as
18 follows:

19 (a) "Child" shall mean a person under the age of eighteen who is
20 placed in foster care pursuant to section three hundred fifty-eight-a,
21 three hundred eighty-four or three hundred eighty-four-a of the social
22 services law or pursuant to section one thousand twenty-two, one thou-
23 sand twenty-seven, [or] one thousand fifty-two, ONE THOUSAND
24 EIGHTY-NINE, ONE THOUSAND NINETY-ONE, ONE THOUSAND NINETY-FOUR OR ONE
25 THOUSAND NINETY-FIVE of this act; or directly placed with a relative
26 pursuant to section one thousand seventeen or one thousand fifty-five of
27 this act; or who has been freed for adoption or a person between the
28 ages of eighteen and twenty-one who has consented to continuation in
29 foster care or trial discharge status; or a former foster care youth
30 under the age of twenty-one for whom a court has granted a motion to
31 permit the former foster care youth to return to the custody of the
32 local commissioner of social services or other officer, board or depart-
33 ment authorized to receive children as public charges.

34 S 7. Section 1088 of the family court act, as separately amended by
35 chapters 41 and 342 of the laws of 2010, is amended to read as follows:

36 S 1088. Continuing court jurisdiction. If a child is placed pursuant
37 to section three hundred fifty-eight-a, three hundred eighty-four, or
38 three hundred eighty-four-a of the social services law, or pursuant to
39 section one thousand seventeen, one thousand twenty-two, one thousand
40 twenty-seven [or], one thousand fifty-two, ONE THOUSAND EIGHTY-NINE, ONE
41 THOUSAND NINETY-ONE, ONE THOUSAND NINETY-FOUR OR ONE THOUSAND
42 NINETY-FIVE of this act, or directly placed with a relative pursuant to
43 section one thousand seventeen or one thousand fifty-five of this act;
44 or if the child is freed for adoption pursuant to section three hundred
45 eighty-three-c, three hundred eighty-four or three hundred eighty-four-b
46 of the social services law, the case shall remain on the court's calen-
47 dar and the court shall maintain jurisdiction over the case until the
48 child is discharged from placement and all orders regarding supervision,
49 protection or services have expired. The court shall rehear the matter
50 whenever it deems necessary or desirable, or upon motion by any party
51 entitled to notice in proceedings under this article, or by the attorney
52 for the child, and whenever a permanency hearing is required by this
53 article. While the court maintains jurisdiction over the case, the
54 provisions of section one thousand thirty-eight of this act shall
55 continue to apply. The court shall also maintain jurisdiction over a
56 case for purposes of hearing a motion to permit a former foster care

1 youth under the age of twenty-one who was discharged from foster care
2 due to a failure to consent to continuation of placement to return to
3 the custody of the local commissioner of social services or other offi-
4 cer, board or department authorized to receive children as public charg-
5 es.

6 S 8. Paragraph 2 of subdivision (a) of section 1089 of the family
7 court act, as amended by chapter 437 of the laws of 2006, is amended to
8 read as follows:

9 (2) All other permanency hearings. At the conclusion of the hearing
10 pursuant to section one thousand twenty-two, one thousand twenty-seven,
11 [or] one thousand fifty-two, ONE THOUSAND EIGHTY-NINE, ONE THOUSAND
12 NINETY-ONE, ONE THOUSAND NINETY-FOUR OR ONE THOUSAND NINETY-FIVE of this
13 act at which the child was remanded or placed and upon the court's
14 approval of a voluntary placement instrument pursuant to section three
15 hundred fifty-eight-a of the social services law, the court shall set a
16 date certain for an initial permanency hearing, advise all parties in
17 court of the date set and include the date in the order. Orders issued
18 in subsequent court hearings prior to the permanency hearing, including,
19 but not limited to, the order of placement issued pursuant to section
20 one thousand fifty-five of this act, shall include the date certain for
21 the permanency hearing. The initial permanency hearing shall be
22 commenced no later than six months from the date which is sixty days
23 after the child was removed from his or her home; provided, however,
24 that if a sibling or half-sibling of the child has previously been
25 removed from the home and has a permanency hearing date certain sched-
26 uled within the next eight months, the permanency hearing for each child
27 subsequently removed from the home shall be scheduled on the same date
28 certain that has been set for the first child removed from the home,
29 unless such sibling or half-sibling has been removed from the home
30 pursuant to article three or seven of this act. The permanency hearing
31 shall be completed within thirty days of the scheduled date certain.

32 S 9. Subdivision (a) of section 1090 of the family court act, as
33 amended by chapter 342 of the laws of 2010, is amended to read as
34 follows:

35 (a) If an attorney for the child has been appointed by the family
36 court in a proceeding pursuant to THIS ARTICLE OR section three hundred
37 fifty-eight-a, three hundred eighty-three-c, three hundred eighty-four,
38 or three hundred eighty-four-b of the social services law, or article
39 ten, TEN-B OR TEN-C of this act, the appointment of the attorney FOR THE
40 CHILD shall continue without further court order or appointment, unless
41 another appointment of an attorney FOR THE CHILD has been made by the
42 court, until the child is discharged from placement and all orders
43 regarding supervision, protection or services have expired. The attor-
44 ney FOR THE CHILD shall also represent the child without further order
45 or appointment in any proceedings under article ten-B OR TEN-C of this
46 act. All notices, reports and motions required by law shall be provided
47 to such attorney. The attorney FOR THE CHILD may be relieved of his or
48 her representation upon application to the court for termination of the
49 appointment. Upon approval of the application, the court shall imme-
50 diately appoint another attorney to whom all notices, reports, and
51 motions required by law shall be provided.

52 S 10. Subdivision (a) of section 1090 of the family court act, as
53 amended by chapter 41 of the laws of 2010, is REPEALED.

54 S 11. The family court act is amended by adding a new article 10-C to
55 read as follows:

ARTICLE 10-C
DESTITUTE CHILDREN

SECTION 1092. DEFINITIONS.

1093. ORIGINATING PROCEEDINGS.

1094. INITIAL APPEARANCE AND PRELIMINARY PROCEEDINGS.

1095. FACT FINDING AND DISPOSITION.

S 1092. DEFINITIONS. WHEN USED IN THIS ARTICLE UNLESS THE SPECIFIC CONTEXT INDICATES OTHERWISE:

(A) "DESTITUTE CHILD" SHALL MEAN A CHILD WHO, THROUGH NO NEGLIGENCE ON THE PART OF THE PARENT, GUARDIAN OR CUSTODIAN, IS A "DESTITUTE CHILD" AS DEFINED IN PARAGRAPH (A), (B) OR (D) OF SUBDIVISION THREE OF SECTION THREE HUNDRED SEVENTY-ONE OF THE SOCIAL SERVICES LAW.

(B) "PARENT" SHALL MEAN ANY LIVING BIOLOGICAL OR ADOPTIVE PARENT OF THE CHILD WHOSE RIGHTS HAVE NOT BEEN TERMINATED OR SURRENDERED.

(C) "PERSON LEGALLY RESPONSIBLE" SHALL MEAN THE CUSTODIAN OR GUARDIAN OF THE DESTITUTE CHILD OR ANY OTHER ADULT RESPONSIBLE FOR THE CARE OF SUCH CHILD AT THE RELEVANT TIME.

(D) "PERMANENCY HEARING" SHALL MEAN A HEARING IN ACCORDANCE WITH ARTICLE TEN-A OF THIS ACT, AS DEFINED IN SUBDIVISION (K) OF SECTION ONE THOUSAND TWELVE OF THIS ACT.

(E) "COMMISSIONER OF SOCIAL SERVICES" SHALL MEAN THE COMMISSIONER OF THE LOCAL DEPARTMENT OF SOCIAL SERVICES OR, IN A CITY HAVING A POPULATION OF ONE MILLION OR MORE, THE ADMINISTRATION FOR CHILDREN'S SERVICES.

S 1093. ORIGINATING PROCEEDINGS. (A) FILING OF THE PETITION. A COMMISSIONER OF SOCIAL SERVICES MAY ORIGINATE A PROCEEDING UNDER THIS ARTICLE BY FILING A PETITION ALLEGING THAT THE CHILD IS A DESTITUTE CHILD AS DEFINED BY SECTION ONE THOUSAND NINETY-TWO OF THIS ARTICLE. A COMMISSIONER OF SOCIAL SERVICES, WHO ACCEPTS THE CARE AND CUSTODY OF A CHILD APPEARING TO BE A DESTITUTE CHILD, SHALL FILE A PETITION PURSUANT TO THIS SECTION FORTHWITH UPON ACCEPTING THE CARE AND CUSTODY OF SUCH CHILD.

(B) VENUE. A PETITION UNDER THIS ARTICLE SHALL BE FILED IN THE FAMILY COURT LOCATED IN THE COUNTY WHERE THE CHILD RESIDES OR IS DOMICILED OR WHERE THE DEPARTMENT OF SOCIAL SERVICES IS LOCATED.

(C) CONTENTS OF THE PETITION. (1) THE PETITION SHALL ALLEGE UPON INFORMATION AND BELIEF:

(I) THE MANNER, DATE AND CIRCUMSTANCE UNDER WHICH THE CHILD BECAME KNOWN TO THE PETITIONER;

(II) THE CHILD'S DATE OF BIRTH;

(III) THAT THE CHILD IS A DESTITUTE CHILD AS DEFINED IN SUBDIVISION (A) OF SECTION ONE THOUSAND NINETY-TWO OF THIS ARTICLE AND IS THE BASIS FOR THE ALLEGATION;

(IV) THE IDENTITY OF THE PARENT OR PARENTS OF THE CHILD IN QUESTION;

(V) WHETHER THE PARENT OR PARENTS OF THE CHILD ARE LIVING OR DECEASED;

(VI) THE WHEREABOUTS AND LAST KNOWN ADDRESS FOR THE PARENT OR PARENTS;

(VII) THE EFFORTS, IF ANY, WHICH WERE MADE PRIOR TO THE FILING OF THE PETITION TO PREVENT THE REMOVAL OF THE CHILD FROM THE HOME AND IF SUCH EFFORTS WERE NOT MADE, THE REASONS SUCH EFFORTS WERE NOT MADE; AND

(VIII) IF THE CHILD HAD BEEN REMOVED FROM HOME PRIOR TO THE FILING OF THE PETITION, THE EFFORTS, IF ANY, WHICH WERE MADE PRIOR TO THE FILING OF THE PETITION TO ALLOW THE CHILD TO RETURN SAFELY HOME, AND IF SUCH EFFORTS WERE NOT MADE, THE REASONS SUCH EFFORTS WERE NOT MADE.

(2) UNLESS THE PARENT OR PARENTS ARE DECEASED, THE PETITION SHALL CONTAIN A NOTICE IN CONSPICUOUS PRINT PROVIDING THAT IF THE CHILD

1 REMAINS IN FOSTER CARE FOR FIFTEEN OF THE MOST RECENT TWENTY-TWO MONTHS,
2 THE AGENCY MAY BE REQUIRED BY LAW TO FILE A PETITION TO TERMINATE
3 PARENTAL RIGHTS.

4 (D) SERVICE OF SUMMONS. (1) UPON THE FILING OF A PETITION UNDER THIS
5 ARTICLE, IF A LIVING PARENT OR PERSON LEGALLY RESPONSIBLE FOR THE CHILD
6 IS IDENTIFIED IN THE PETITION, THE COURT SHALL CAUSE A COPY OF THE PETI-
7 TION AND A SUMMONS TO BE ISSUED THE SAME DAY THE PETITION IS FILED,
8 REQUIRING SUCH PARENT OR PERSON LEGALLY RESPONSIBLE FOR THE CHILD TO
9 APPEAR IN COURT ON THE RETURN DATE TO ANSWER THE PETITION.

10 (2) SERVICE OF A SUMMONS AND PETITION UNDER THIS ARTICLE SHALL BE MADE
11 BY DELIVERY OF A TRUE COPY THEREOF TO THE PERSON SUMMONED AT LEAST TWEN-
12 TY-FOUR HOURS BEFORE THE TIME STATED THEREIN FOR APPEARANCE.

13 (3) THE COURT MAY SEND PROCESS WITHOUT THE STATE IN THE SAME MANNER
14 AND WITH THE SAME EFFECT AS PROCESS SENT WITHIN THE STATE IN THE EXER-
15 CISE OF PERSONAL JURISDICTION OVER ANY PERSON SUBJECT TO THE JURISDIC-
16 TION OF THE COURT UNDER SECTION THREE HUNDRED ONE OR THREE HUNDRED TWO
17 OF THE CIVIL PRACTICE LAW AND RULES, NOTWITHSTANDING THAT SUCH PERSON IS
18 NOT A RESIDENT OR DOMICILIARY OF THE STATE. WHERE SERVICE IS EFFECTED
19 ON AN OUT-OF-STATE RESPONDENT AND THE RESPONDENT DEFAULTS BY FAILING TO
20 APPEAR TO ANSWER THE PETITION, THE COURT MAY ON ITS OWN MOTION, OR UPON
21 APPLICATION OF ANY PARTY OR THE ATTORNEY FOR THE CHILD PROCEED TO A
22 HEARING PURSUANT TO SECTION ONE THOUSAND NINETY-FIVE OF THIS ARTICLE.

23 (4) IF AFTER REASONABLE EFFORT, PERSONAL SERVICE IS NOT MADE, THE
24 COURT MAY AT ANY STAGE IN THE PROCEEDINGS MAKE AN ORDER PROVIDING FOR
25 SUBSTITUTED SERVICE IN THE MANNER PROVIDED FOR SUBSTITUTED SERVICE IN
26 CIVIL PROCESS IN COURTS OF RECORD.

27 S 1094. INITIAL APPEARANCE AND PRELIMINARY PROCEEDINGS. (A) AT THE
28 INITIAL APPEARANCE, THE COURT SHALL:

29 (1) APPOINT AN ATTORNEY TO REPRESENT THE CHILD AND, IF APPEARING, THE
30 PARENT OR PARENTS OR OTHER PERSON OR PERSONS LEGALLY RESPONSIBLE;

31 (2) (I) IF A PARENT OR PARENTS OR OTHER PERSON OR PERSONS LEGALLY
32 RESPONSIBLE APPEAR, DETERMINE WHETHER THE CHILD MAY SAFELY REMAIN IN HIS
33 OR HER OR THEIR HOME AND, IF APPROPRIATE, ORDER SERVICES TO ASSIST THE
34 FAMILY TOWARD THAT END;

35 (II) DETERMINE WHETHER THE CHILD'S HEALTH OR SAFETY WOULD BE IN IMMI-
36 NENT RISK AND WHETHER IT WOULD BE CONTRARY TO THE WELFARE OF THE CHILD
37 TO CONTINUE IN HIS OR HER OWN HOME, AND, IF SO, WHETHER THE CHILD SHOULD
38 BE PLACED IN THE TEMPORARY CARE AND CUSTODY OF A RELATIVE OR OTHER SUIT-
39 ABLE PERSON OR IN THE TEMPORARY CARE AND CUSTODY OF THE COMMISSIONER OF
40 SOCIAL SERVICES;

41 (III) UPON A DETERMINATION THAT THE CHILD SHOULD BE TEMPORARILY
42 PLACED:

43 (A) DIRECT THE PETITIONER TO INVESTIGATE WHETHER THERE ARE ANY PARENTS
44 OR OTHER PERSONS LEGALLY RESPONSIBLE NOT NAMED IN THE PETITION OR ANY
45 OTHER RELATIVES OR OTHER SUITABLE PERSONS WITH WHOM THE CHILD MAY SAFELY
46 RESIDE AND, IF SO, DIRECT THE CHILD TO RESIDE TEMPORARILY IN THEIR CARE;
47 AND

48 (B) IF A RELATIVE OR OTHER SUITABLE PERSON SEEKS APPROVAL TO CARE FOR
49 THE CHILD AS A FOSTER PARENT, DIRECT THE PETITIONER TO COMMENCE AN
50 INVESTIGATION INTO THE HOME OF SUCH RELATIVE AND THEREAFTER APPROVE SUCH
51 RELATIVE OR OTHER SUITABLE PERSON, IF QUALIFIED, AS A FOSTER PARENT;
52 PROVIDED, HOWEVER, THAT IF SUCH HOME IS FOUND TO BE UNQUALIFIED FOR
53 APPROVAL, THE PETITIONER SHALL REPORT SUCH FACT TO THE COURT FORTHWITH
54 AND, IN THE CASE OF A RELATIVE WHO SEEKS APPROVAL TO CARE FOR THE CHILD
55 AS A FOSTER PARENT, THE RELATIVE MAY PROCEED IN ACCORDANCE WITH SECTION
56 ONE THOUSAND TWENTY-EIGHT-A OF THIS ACT.

1 (3) SET A DATE CERTAIN FOR THE FACT FINDING AND DISPOSITION HEARING
2 PURSUANT TO SECTION ONE THOUSAND NINETY-FIVE OF THIS ARTICLE AND, IF THE
3 CHILD IS TEMPORARILY PLACED, SET A DATE CERTAIN FOR THE INITIAL PERMAN-
4 ENCY HEARING PURSUANT TO PARAGRAPH TWO OF SUBDIVISION (A) OF SECTION ONE
5 THOUSAND EIGHTY-NINE OF THIS ACT. THE DATE CERTAIN FOR THE INITIAL
6 PERMANENCY HEARING SHALL BE NO LATER THAN EIGHT MONTHS FROM THE DATE THE
7 SOCIAL SERVICES OFFICIAL ACCEPTED CARE OF THE CHILD;

8 (4) DETERMINE WHETHER REASONABLE EFFORTS WERE MADE PRIOR TO THE PLACE-
9 MENT OF THE CHILD INTO FOSTER CARE TO PREVENT OR ELIMINATE THE NEED FOR
10 REMOVAL OF THE CHILD FROM HIS OR HER HOME, AND IF SUCH EFFORTS WERE NOT
11 MADE WHETHER THE LACK OF SUCH EFFORTS WERE APPROPRIATE UNDER THE CIRCUM-
12 STANCES; DETERMINE, WHERE APPROPRIATE, IF REASONABLE EFFORTS WERE MADE
13 TO MAKE IT POSSIBLE FOR THE CHILD TO RETURN SAFELY HOME; AND

14 (5) INCLUDE THE FINDINGS MADE PURSUANT TO PARAGRAPHS ONE THROUGH FOUR
15 OF THIS SUBDIVISION IN A WRITTEN ORDER.

16 (B) UNLESS THERE HAS BEEN A HEARING UNDER SUBDIVISION (A) OF THIS
17 SECTION AT WHICH THE PARENT OR PARENTS AND CHILD'S ATTORNEY APPEARED,
18 THE PARENT OR PARENTS OF THE CHILD OR THE CHILD'S ATTORNEY MAY REQUEST A
19 HEARING TO DETERMINE WHETHER A CHILD WHO HAS BEEN REMOVED FROM HIS OR
20 HER HOME SHOULD BE RETURNED AND, IF SO, WHETHER SERVICES SHOULD BE
21 ORDERED TO FACILITATE SUCH RETURN. EXCEPT FOR GOOD CAUSE SHOWN, THE
22 HEARING SHALL BE HELD WITHIN THREE COURT DAYS OF THE REQUEST AND SHALL
23 NOT BE ADJOURNED. THE COURT SHALL GRANT THE APPLICATION FOR RETURN OF
24 THE CHILD UNLESS THE CHILD WOULD BE IN IMMINENT RISK IF RETURNED. IF
25 IMMINENT RISK TO THE CHILD IS FOUND, THE COURT MAY MAKE ORDERS IN
26 ACCORDANCE WITH PARAGRAPH TWO OF SUBDIVISION (A) OF THIS SECTION,
27 INCLUDING, BUT NOT LIMITED TO, DIRECTIONS FOR INVESTIGATIONS OF RELA-
28 TIVES OR OTHER SUITABLE PERSONS WITH WHOM THE CHILD MAY SAFELY RESIDE.

29 S 1095. FACT FINDING AND DISPOSITION. (A) NO FACT FINDING HEARING MAY
30 COMMENCE UNDER THIS ARTICLE UNLESS THE COURT ENTERS A FINDING:

31 (1) THAT THE PARENT OR PARENTS OR OTHER PERSON OR PERSONS LEGALLY
32 RESPONSIBLE FOR THE CHILD'S CARE IS OR ARE PRESENT AT THE HEARING AND
33 HAS OR HAVE BEEN SERVED WITH A COPY OF THE PETITION; OR

34 (2) IF THE PARENT OR PARENTS OR OTHER PERSON OR PERSONS LEGALLY
35 RESPONSIBLE FOR THE CARE OF THE CHILD IS OR ARE LIVING BUT ARE NOT PRES-
36 ENT, THAT EVERY REASONABLE EFFORT HAS BEEN MADE TO EFFECT SERVICE UNDER
37 SUBDIVISION (D) OF SECTION ONE THOUSAND NINETY-THREE OF THIS ARTICLE.

38 (B) THE COURT SHALL SUSTAIN THE PETITION AND MAKE A FINDING THAT A
39 CHILD IS DESTITUTE IF, BASED UPON A PREPONDERANCE OF COMPETENT, MATERIAL
40 AND RELEVANT EVIDENCE PRESENTED, THE COURT FINDS THAT THE CHILD MEETS
41 THE DEFINITION OF A DESTITUTE CHILD AS DESCRIBED IN SUBDIVISION (A) OF
42 SECTION ONE THOUSAND NINETY-TWO OF THIS ARTICLE.

43 (C) IF THE COURT FINDS THAT THE CHILD DOES NOT MEET SUCH DEFINITION OF
44 A DESTITUTE CHILD OR THAT THE AID OF THE COURT IS NOT REQUIRED, THE
45 COURT SHALL DISMISS THE PETITION; PROVIDED, HOWEVER, THAT IF THE COURT
46 FINDS THAT THE CHILD MAY BE IN NEED OF PROTECTION UNDER ARTICLE TEN OF
47 THIS ACT, THE COURT MAY REQUEST THE COMMISSIONER OF SOCIAL SERVICES TO
48 CONDUCT A CHILD PROTECTIVE INVESTIGATION IN ACCORDANCE WITH SUBDIVISION
49 ONE OF SECTION ONE THOUSAND THIRTY-FOUR OF THIS ACT. THE COURT SHALL
50 STATE THE GROUNDS FOR ANY FINDING UNDER THIS SUBDIVISION.

51 (D) IF THE COURT SUSTAINS THE PETITION PURSUANT TO SUBDIVISION (B) OF
52 THIS SECTION, IT MAY IMMEDIATELY CONVENE A DISPOSITIONAL HEARING OR MAY
53 ADJOURN THE PROCEEDING FOR FURTHER INQUIRIES TO BE MADE PRIOR TO DISPO-
54 SITION. BASED UPON MATERIAL AND RELEVANT EVIDENCE PRESENTED AT THE
55 DISPOSITIONAL HEARING, THE COURT SHALL ENTER AN ORDER OF DISPOSITION

1 STATING THE GROUNDS FOR ITS ORDER AND DIRECTING ONE OF THE FOLLOWING
2 ALTERNATIVES:

3 (1) RELEASING THE CHILD TO HIS OR HER PARENT OR PARENTS OR OTHER
4 PERSON OR PERSONS LEGALLY RESPONSIBLE;

5 (2) PLACING THE CHILD IN THE CARE AND CUSTODY OF THE COMMISSIONER OF
6 SOCIAL SERVICES;

7 (3) PLACING THE CHILD IN THE CARE AND CUSTODY OF RELATIVES OR SUITABLE
8 PERSONS; OR

9 (4) GRANTING AN ORDER OF CUSTODY OR GUARDIANSHIP TO RELATIVES OR SUIT-
10 ABLE PERSONS PURSUANT TO A PETITION UNDER ARTICLE SIX OF THIS ACT AND IN
11 ACCORDANCE WITH THE FINDINGS REQUIRED BY SECTION ONE THOUSAND
12 FIFTY-FIVE-B OF THIS ACT.

13 (E) IF THE CHILD HAS BEEN PLACED PURSUANT TO PARAGRAPHS TWO OR THREE
14 OF SUBDIVISION (D) OF THIS SECTION, THE COURT SHALL INCLUDE THE FOLLOW-
15 ING IN ITS ORDER:

16 (1) A DATE CERTAIN FOR THE PERMANENCY HEARING IN ACCORDANCE WITH PARA-
17 GRAPH TWO OF SUBDIVISION (A) OF SECTION ONE THOUSAND EIGHTY-NINE OF THIS
18 ARTICLE;

19 (2) UNLESS THE CHILD'S PARENT OR PARENTS ARE DECEASED, A DESCRIPTION
20 OF THE PLAN FOR THE CHILD TO VISIT WITH HIS OR HER PARENT OR PARENTS
21 UNLESS CONTRARY TO THE CHILD'S BEST INTERESTS;

22 (3) A DIRECTION THAT THE CHILD BE PLACED TOGETHER WITH OR, AT MINIMUM,
23 TO VISIT AND HAVE REGULAR COMMUNICATION WITH, HIS OR HER SIBLINGS, IF
24 ANY, UNLESS CONTRARY TO THE BEST INTERESTS OF THE CHILD AND/OR THE
25 SIBLINGS;

26 (4) UNLESS THE CHILD'S PARENT OR PARENTS ARE DECEASED, A DIRECTION
27 THAT THE CHILD'S PARENT OR PARENTS BE NOTIFIED OF ANY PLANNING CONFER-
28 ENCES TO BE HELD PURSUANT TO SUBDIVISION THREE OF SECTION FOUR HUNDRED
29 NINE-E OF THE SOCIAL SERVICES LAW, OF THEIR RIGHT TO ATTEND SUCH CONFER-
30 ENCES AND TO HAVE COUNSEL OR ANOTHER REPRESENTATIVE OR COMPANION WITH
31 THEM;

32 (5) IF THE CHILD IS OR WILL BE FOURTEEN OR OLDER BY THE DATE OF THE
33 PERMANENCY HEARING, THE SERVICES AND ASSISTANCE THAT MAY BE NECESSARY TO
34 ASSIST THE CHILD IN LEARNING INDEPENDENT LIVING SKILLS; AND

35 (6) UNLESS THE CHILD'S PARENT OR PARENTS ARE DECEASED, A NOTICE THAT,
36 IF THE CHILD REMAINS IN FOSTER CARE FOR FIFTEEN OF THE MOST RECENT TWEN-
37 TY-TWO MONTHS, THE AGENCY MAY BE REQUIRED BY LAW TO FILE A PETITION TO
38 TERMINATE PARENTAL RIGHTS.

39 (F) IF THE CHILD HAS BEEN PLACED PURSUANT TO PARAGRAPH TWO OR THREE OF
40 SUBDIVISION (D) OF THIS SECTION, THE PROVISIONS OF PART EIGHT OF ARTICLE
41 TEN OF THIS ACT SHALL BE APPLICABLE.

42 (G) IF THE COURT MAKES AN ORDER PURSUANT TO PARAGRAPH ONE, TWO OR
43 THREE OF SUBDIVISION (D) OF THIS SECTION, THE COURT MAY INCLUDE A DIREC-
44 TION FOR THE COMMISSIONER OF SOCIAL SERVICES TO PROVIDE OR ARRANGE FOR
45 SERVICES OR ASSISTANCE, AUTHORIZED TO BE MADE AVAILABLE UNDER THE
46 COMPREHENSIVE ANNUAL SERVICES PROGRAM PLAN THEN IN EFFECT, TO AMELIORATE
47 THE CONDITIONS THAT FORMED THE BASIS FOR THE FACT-FINDING UNDER THIS
48 SECTION AND, IF THE CHILD HAS BEEN REMOVED FROM HOME, TO FACILITATE
49 RETURN OF THE CHILD.

50 S 12. Subdivision 1 of section 398 of the social services law is
51 amended to read as follows:

52 1. As to destitute children: Assume charge of and provide CARE AND
53 support for any destitute child who cannot be properly cared for in his
54 OR HER home, AND IF IT IS NECESSARY FOR THE COMMISSIONER TO TAKE CUSTODY
55 OF THE CHILD, FILE A PETITION PURSUANT TO SECTION ONE THOUSAND
56 NINETY-THREE OF THE FAMILY COURT ACT.

1 S 13. Paragraph (i) of subdivision 6 of section 398 of the social
2 services law is REPEALED.

3 S 14. This act shall take effect immediately; provided, however, that
4 local commissioners of social services shall file petitions under this
5 act within ninety days of such effective date for any destitute child in
6 their care and custody on such effective date and provided further that
7 section ten of this act shall take effect immediately and shall be
8 deemed to have been in full force and effect on the same date and in the
9 same manner as chapter 342 of the laws of 2010 took effect.