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

364

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. MONTGOMERY -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the family court act and the social services law, in relation to destitute children; 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 (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-A AND TEN-C 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 fifty-five, as amended, the interstate compact on the placement of chil-

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

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

(a) In a proceeding under article three, seven, ten [or], ten-A OR TEN-C 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 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 an attorney 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 assigned counsel. In any other proceeding in which the court has jurisdiction, the court may appoint an attorney 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 3. Paragraph (iv) of subdivision (a) of section 262 of the family court act, as amended by chapter 437 of the laws of 2006, is amended to read as follows:

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

S 4. The family court act is amended by adding a new article 10-C to read as follows:

ARTICLE 10-C
DESTITUTE CHILDREN

SECTION 1092. DEFINITIONS.
1093. ORIGINATING PROCEEDINGS AND PRELIMINARY PROCEDURE.
1094. INITIAL APPEARANCE.
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 WITH NO PARENT OR PERSON LEGALLY RESPONSIBLE AVAILABLE TO SAFELY CARE FOR HIM OR HER, WHO MEETS THE DEFINITION OF "DESTITUTE CHILD" AS DEFINED IN PARAGRAPH (B) OR (D) OF SUBDIVISION THREE OF SECTION THREE HUNDRED SEVENTY-ONE OF THE SOCIAL SERVICES LAW.

(B) "THE CHILD" SHALL MEAN A DESTITUTE CHILD, OR A CHILD ALLEGED TO BE A DESTITUTE CHILD AS DEFINED IN SUBDIVISION (A) OF THIS SECTION.

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

(D) "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.

(E) "PERMANENCY HEARING" SHALL MEAN "PERMANENCY HEARING" AS DEFINED IN SUBDIVISION (K) OF SECTION ONE THOUSAND TWELVE OF THIS ACT.

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

(G) "COMMISSIONER" SHALL MEAN THE COMMISSIONER OF THE APPLICABLE AGENCY, AS DEFINED IN SUBDIVISION (F) OF THIS SECTION.

S 1093. ORIGINATING PROCEEDINGS AND PRELIMINARY PROCEDURE. (A) PROCEEDINGS UNDER THIS ARTICLE SHALL BE ORIGINATED BY AN AGENCY FILING A PETITION CONTAINING AN ALLEGATION THAT THE CHILD IN QUESTION IS A DESTITUTE CHILD AS DEFINED BY SECTION ONE THOUSAND NINETY-TWO OF THIS ARTICLE.

(B) A COMMISSIONER WHO ACCEPTS AS A PUBLIC CHARGE THE CARE OF A CHILD WHO APPEARS TO BE A DESTITUTE CHILD SHALL FORTHWITH FILE A PETITION PURSUANT TO THIS SECTION AFTER ACCEPTING THE CARE OF SUCH CHILD. SUCH PETITION SHALL BE FILED IN THE FAMILY COURT LOCATED IN THE COUNTY WHERE THE AGENCY 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 AGENCY;

(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;

(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 WHY; AND

(VIII) 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 WHY.

(2) THE PETITION SHALL CONTAIN A NOTICE IN CONSPICUOUS PRINT PROVIDING THAT IF THE CHILD REMAINS IN FOSTER CARE FOR FIFTEEN OF THE MOST RECENT TWENTY-TWO MONTHS, THE AGENCY MAY BE REQUIRED BY LAW TO FILE A PETITION TO TERMINATE PARENTAL RIGHTS.

(D) NOTICE. (1) ON THE FILING OF A PETITION UNDER THIS ARTICLE IF A PARENT OR PERSON LEGALLY RESPONSIBLE FOR THE CHILD IS IDENTIFIED IN THE PETITION, THE COURT SHALL CAUSE A COPY OF THE PETITION AND A SUMMONS TO BE ISSUED THE SAME DAY THE PETITION IS FILED, REQUIRING SUCH PARENT OR PERSON LEGALLY RESPONSIBLE FOR THE CHILD TO APPEAR IN COURT ON THE RETURN DATE TO ANSWER THE PETITION. SERVICE OF A SUMMONS AND PETITION UNDER THIS ARTICLE SHALL BE MADE BY DELIVERY OF A TRUE COPY THEREOF TO THE PERSON SUMMONED AT LEAST TWENTY-FOUR HOURS BEFORE THE TIME STATED THEREIN FOR APPEARANCE. THE COURT MAY SEND PROCESS WITHOUT THE STATE IN THE SAME MANNER AND WITH THE SAME EFFECT AS PROCESS SENT WITHIN THE STATE IN THE EXERCISE OF PERSONAL JURISDICTION OVER ANY PERSON SUBJECT TO THE JURISDICTION OF THE COURT UNDER SECTION THREE HUNDRED ONE OR

THREE HUNDRED TWO OF THE CIVIL PRACTICE LAW AND RULES, NOTWITHSTANDING THAT SUCH PERSON IS NOT A RESIDENT OR DOMICILIARY OF THE STATE, WHERE THE ALLEGEDLY DESTITUTE CHILD WAS FOUND WITHIN THE STATE. WHERE SERVICE IS EFFECTED ON AN OUT OF STATE RESPONDENT AND THE RESPONDENT DEFAULTS BY FAILING TO APPEAR TO ANSWER THE PETITION, THE COURT MAY ON ITS OWN MOTION, OR UPON APPLICATION OF ANY PARTY OR THE LAW GUARDIAN PROCEED TO A FACT FINDING HEARING THEREON. IF AFTER REASONABLE EFFORT, PERSONAL SERVICE IS NOT MADE, THE COURT MAY AT ANY STAGE IN THE PROCEEDINGS MAKE AN ORDER PROVIDING FOR SUBSTITUTED SERVICE IN THE MANNER PROVIDED FOR SUBSTITUTED SERVICE IN CIVIL PROCESS IN COURTS OF RECORD. IF THE PARENT OR PARENTS OF THE CHILD IS OR ARE DECEASED AND NO PERSON LEGALLY RESPONSIBLE FOR THE CHILD HAS BEEN IDENTIFIED, THEN NOTICE OF THE PROCEEDING AND A COPY OF THE PETITION SHALL BE MADE UPON SUCH PERSONS AND IN SUCH MANNER AS THE COURT MAY DIRECT.

(2) THE SUMMONS SHALL CONTAIN A STATEMENT IN CONSPICUOUS PRINT INFORMING THE PARENT OR OTHER PERSONS LEGALLY RESPONSIBLE THAT IF THE CHILD REMAINS IN FOSTER CARE FOR FIFTEEN OF THE MOST RECENT TWENTY-TWO MONTHS, THE AGENCY MAY BE REQUIRED BY LAW TO FILE A PETITION TO TERMINATE PARENTAL RIGHTS.

S 1094. INITIAL APPEARANCE. (A) AT THE INITIAL APPEARANCE THE COURT SHALL:

(1) APPOINT A LAW GUARDIAN TO REPRESENT THE CHILD;

(2) (I) DETERMINE WHETHER PLACEMENT OF THE CHILD IN THE TEMPORARY CARE AND CUSTODY OF THE COMMISSIONER IS IN THE BEST INTERESTS OF THE CHILD.

(II) IF THE COURT PLACES THE CHILD IN THE TEMPORARY CARE AND CUSTODY OF THE COMMISSIONER PURSUANT TO THIS PARAGRAPH THE COURT SHALL SET A DATE CERTAIN FOR THE FACT FINDING AND DISPOSITION HEARING PURSUANT TO SECTION ONE THOUSAND NINETY-FIVE OF THIS ARTICLE AND THE INITIAL PERMANENCY HEARING PURSUANT TO PARAGRAPH TWO OF SUBDIVISION (A) OF SECTION ONE THOUSAND EIGHTY-NINE OF THIS ACT. THE DATE CERTAIN FOR THE INITIAL PERMANENCY HEARING SHALL BE NO LATER THAN EIGHT MONTHS FROM THE DATE THE SOCIAL SERVICES OFFICIAL ACCEPTED CARE OF THE CHILD;

(3) DETERMINE WHETHER IT WOULD BE CONTRARY TO THE WELFARE OF THE CHILD TO CONTINUE IN HIS OR HER OWN HOME;

(4) DETERMINE WHETHER REASONABLE EFFORTS WERE MADE PRIOR TO THE PLACEMENT OF THE CHILD INTO FOSTER CARE TO PREVENT OR ELIMINATE THE NEED FOR REMOVAL OF THE CHILD FROM HIS OR HER HOME, AND IF SUCH EFFORTS WERE NOT MADE WHETHER THE LACK OF SUCH EFFORTS WERE APPROPRIATE UNDER THE CIRCUMSTANCES;

(5) DETERMINE, WHERE APPROPRIATE, IF REASONABLE EFFORTS WERE MADE TO MAKE IT POSSIBLE FOR THE CHILD TO RETURN SAFELY HOME; AND

(6) INCLUDE THE FINDINGS MADE PURSUANT TO PARAGRAPHS ONE THROUGH FIVE OF THIS SUBDIVISION IN A WRITTEN ORDER.

(B) IF THE COURT PLACES THE CHILD IN THE TEMPORARY CUSTODY OF THE COMMISSIONER PURSUANT TO SUBDIVISION (A) OF THIS SECTION THE COURT MAY ORDER THE AGENCY TO CONDUCT AN INVESTIGATION OF THE FAMILY CIRCUMSTANCES OF THE CHILD, INCLUDING, BUT NOT LIMITED TO:

(1) WHETHER THE CHILD MAY BE AN ABUSED OR MALTREATED CHILD;

(I) IF THE COURT HAS REASONABLE CAUSE TO SUSPECT THE CHILD IS ABUSED OR MALTREATED THE COURT MAY REQUEST THE AGENCY TO CAUSE A CALL TO BE MADE TO THE STATEWIDE CENTRAL REGISTER FOR CHILD ABUSE AND MALTREATMENT PURSUANT TO SECTION FOUR HUNDRED FOURTEEN OF THE SOCIAL SERVICES LAW; OR

(II) IF THE COURT HAS REASONABLE CAUSE TO SUSPECT THE CHILD MAY BE AN ABUSED CHILD AS DEFINED IN SUBDIVISION (E) OF SECTION ONE THOUSAND TWELVE OF THIS ACT OR A NEGLECTED CHILD AS DEFINED IN SUBDIVISION (F) OF SECTION ONE THOUSAND TWELVE OF THIS ACT, THE COURT MAY REQUEST THE AGEN-

CY TO FILE A PETITION IN REGARDS TO THE CHILD PURSUANT TO ARTICLE TEN OF THIS ACT; AND

(2) (I) THE IDENTITY OR WHEREABOUTS OF ANY RELATIVES WHO MAY BE WILLING TO CARE FOR THE CHILD; OR

(II) IF A RELATIVE OR OTHER SUITABLE PERSON WILLING TO CARE FOR THE CHILD IS KNOWN TO THE COURT, THE COURT MAY DIRECT THAT THE COMMISSIONER HAVE THE CHILD LIVE WITH SUCH RELATIVE OR OTHER SUITABLE PERSON, AND COMMENCE AN INVESTIGATION INTO THE HOME OF SUCH RELATIVE AND THEREAFTER APPROVE SUCH RELATIVE OR OTHER SUITABLE PERSON, IF QUALIFIED, AS A FOSTER PARENT. IF SUCH HOME IS FOUND TO BE UNQUALIFIED FOR APPROVAL, THE LOCAL COMMISSIONER SHALL REPORT SUCH FACT TO THE COURT FORTHWITH.

S 1095. FACT FINDING AND DISPOSITION. (A) THE COURT SHALL SUSTAIN THE PETITION AND MAKE A FINDING THAT A CHILD IS DESTITUTE IF BASED ON A PREPONDERANCE OF EVIDENCE PRESENTED, THE COURT FINDS THAT THE CHILD MEETS THE DEFINITION OF A DESTITUTE CHILD AS DESCRIBED IN SUBDIVISION (A) OF SECTION ONE THOUSAND NINETY-TWO OF THIS ARTICLE. IF THE COURT SUSTAINS THE PETITION PURSUANT TO THIS SUBDIVISION, IT SHALL ISSUE A WRITTEN ORDER WHICH:

(1) PLACES THE CHILD IN THE CARE AND CUSTODY OF THE COMMISSIONER;

(2) LISTS THE DATE CERTAIN FOR THE NEXT SCHEDULED PERMANENCY HEARING; AND

(3) STATES THE GROUNDS FOR THE COURT'S FINDING PURSUANT TO THIS SUBDIVISION.

(B) IF THE COURT FINDS THAT BASED ON THE EVIDENCE PRESENTED THE CHILD DOES NOT MEET THE DEFINITION OF A DESTITUTE CHILD AS DESCRIBED IN SUBDIVISION (A) OF SECTION ONE THOUSAND NINETY-TWO OF THIS ARTICLE, THE COURT SHALL DISMISS THE PETITION.

(C) IF THE COURT FINDS THAT BASED ON THE EVIDENCE PRESENTED THE CHILD DOES NOT MEET THE DEFINITION OF A DESTITUTE CHILD AS DESCRIBED IN SUBDIVISION (A) OF SECTION ONE THOUSAND NINETY-TWO OF THIS ARTICLE, BUT THE COURT FINDS THAT IT APPEARS THAT THE CHILD MEETS THE DEFINITION OF AN ABUSED CHILD PURSUANT TO SUBDIVISION (E) OF SECTION ONE THOUSAND TWELVE OF THIS ACT OR A NEGLECTED CHILD PURSUANT TO SUBDIVISION (F) OF SECTION ONE THOUSAND TWELVE OF THIS ACT, THE COURT MAY REQUEST THE AGENCY TO FILE A PETITION REGARDING THE CHILD FORTHWITH PURSUANT TO ARTICLE TEN OF THIS ACT, PRIOR TO DISMISSING THE PETITION PURSUANT TO SUBDIVISION (B) OF THIS SECTION.

S 5. 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 of the social services law or pursuant to section one thousand twenty-two, one thousand twenty-seven, [or] one thousand fifty-two, ONE THOUSAND NINETY-FOUR OR ONE THOUSAND NINETY-FIVE 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 6. Subdivision (a) of section 1087 of the family court act, as amended by chapter 342 of the laws of 2010, 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 of the social services law or pursuant to section one thousand twenty-two, one thousand twenty-seven, [or] one thousand fifty-two, ONE THOUSAND NINETY-FOUR OR ONE THOUSAND NINETY-FIVE 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 or trial discharge status; or a former foster care youth under the age of twenty-one for whom a court has granted a motion to permit the former foster care youth to return to the custody of the local commissioner of social services or other officer, board or department authorized to receive children as public charges.

S 7. Section 1088 of the family court act, as separately amended by chapters 41 and 342 of the laws of 2010, 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 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, ONE THOUSAND NINETY-FOUR OR ONE THOUSAND NINETY-FIVE 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 attorney 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. The court shall also maintain jurisdiction over a case for purposes of hearing a motion to permit a former foster care youth under the age of twenty-one who was discharged from foster care due to a failure to consent to continuation of placement to return to the custody of the local commissioner of social services or other officer, board or department authorized to receive children as public charges.

S 8. 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, ONE THOUSAND NINETY-FOUR OR ONE THOUSAND NINETY-FIVE of this act 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, 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, howev-

er, 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 9. Subdivision (a) of section 1090 of the family court act, as separately amended by chapters 41 and 342 of the laws of 2010, is amended to read as follows:

(a) If an attorney 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 of the social services law, or article ten OR TEN-C of this act, the appointment of the attorney for the child shall continue without further court order or appointment, unless another appointment of an attorney for the child has been made by the court, until the child is discharged from placement and all orders regarding supervision, protection or services have expired. The attorney shall also represent the child without further order or appointment in any proceedings under article ten-B of this act. All notices, reports and motions required by law shall be provided to the child's attorney. The child's attorney 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 attorney to whom all notices, reports, and motions required by law shall be provided.

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 support for any destitute child who cannot be properly cared for in his home, AND IF IT IS NECESSARY FOR THE COMMISSIONER TO TAKE CUSTODY OF THE CHILD, FILE A PETITION PURSUANT TO SECTION ONE THOUSAND NINETY-THREE OF THE FAMILY COURT ACT.

S 11. Paragraph (i) of subdivision 6 of section 398 of the social services law is REPEALED.

S 12. This act shall take effect immediately; provided, however, that local social services districts may wait up to ninety days subsequent to the effective date of this act to file petitions in accordance with subdivision (b) of section one thousand ninety-three of the family court act as added by section four of this act, for children who were in the care of such district on the effective date of this act who meet the definition of destitute child as described in subdivision (a) of section one thousand ninety-two of the family court act as added by section four of this act.