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

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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:

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; PERMANENCY PROCEEDINGS AS SET FORTH IN ARTICLE TEN-A OF THIS ACT; proceedings concerning FORMER FOSTER CHILDREN AS SET FORTH IN ARTICLE TEN-B OF THIS ACT; PROCEEDINGS CONCERNING DESTITUTE CHILDREN, AS SET FORTH IN ARTICLE TEN-C OF THIS ACT; PROCEEDINGS CONCERNING guardianship 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.

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 children, as set forth in section three hundred seventy-four-a of the social services law, and the uniform child custody jurisdiction and enforcement act, as set forth in article five-A of the domestic relations law.

S 2. 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, TEN-B 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. Paragraphs (i) and (iv) of subdivision (a) of section 262 of the family court act, paragraph (i) as amended by section 3 of part A of chapter 3 of the laws of 2005 and paragraph (iv) as amended by chapter 437 of the laws of 2006, are amended to read as follows:

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

(iv) the parent OR OTHER PERSON LEGALLY RESPONSIBLE, foster parent, or other person having physical or legal custody of the child in any proceeding under article ten [or], ten-A, TEN-B 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. Section 1059 of the family court act is REPEALED.

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 EIGHTY-NINE, ONE THOUSAND NINETY-ONE, 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 EIGHTY-NINE, ONE THOUSAND NINETY-ONE, 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 EIGHTY-NINE, ONE THOUSAND NINETY-ONE, 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 EIGHTY-NINE, ONE THOUSAND NINETY-ONE, 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, 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 9. Subdivision (a) of section 1090 of the family court act, as amended by chapter 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 THIS ARTICLE OR 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, TEN-B 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 FOR THE CHILD shall also represent the child without further order or appointment in any proceedings under article ten-B OR TEN-C of this act. All notices, reports and motions required by law shall be provided to such attorney. The attorney FOR THE CHILD 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 (a) of section 1090 of the family court act, as amended by chapter 41 of the laws of 2010, is REPEALED.

S 11. 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.
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 NEGLECT 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

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) SERVICE OF SUMMONS. (1) UPON THE FILING OF A PETITION UNDER THIS ARTICLE, IF A LIVING 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.

(2) 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.

(3) 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 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 ATTORNEY FOR THE CHILD PROCEED TO A HEARING PURSUANT TO SECTION ONE THOUSAND NINETY-FIVE OF THIS ARTICLE.

(4) 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.

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

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

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

(II) DETERMINE WHETHER THE CHILD'S HEALTH OR SAFETY WOULD BE IN IMMINENT RISK AND WHETHER IT WOULD BE CONTRARY TO THE WELFARE OF THE CHILD TO CONTINUE IN HIS OR HER OWN HOME, AND, IF SO, WHETHER THE CHILD SHOULD BE PLACED IN THE TEMPORARY CARE AND CUSTODY OF A RELATIVE OR OTHER SUITABLE PERSON OR IN THE TEMPORARY CARE AND CUSTODY OF THE COMMISSIONER OF SOCIAL SERVICES;

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

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

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

(3) SET A DATE CERTAIN FOR THE FACT FINDING AND DISPOSITION HEARING PURSUANT TO SECTION ONE THOUSAND NINETY-FIVE OF THIS ARTICLE AND, IF THE CHILD IS TEMPORARILY PLACED, SET A DATE CERTAIN FOR 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;

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

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

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

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

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

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

(B) THE COURT SHALL SUSTAIN THE PETITION AND MAKE A FINDING THAT A CHILD IS DESTITUTE IF, BASED UPON A PREPONDERANCE OF COMPETENT, MATERIAL AND RELEVANT 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) UNLESS THE CHILD'S PARENT OR PARENTS ARE DECEASED, A NOTICE 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.

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

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

S 12. 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 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 13. Paragraph (i) of subdivision 6 of section 398 of the social services law is REPEALED.

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