

2011-2012 Regular Sessions

I N   S E N A T E

(PREFILED)

January 5, 2011

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

AN ACT to amend the family court act and the social services law, in  
relation to notification of the court, the parties and the attorney  
for the child, when a child protective or foster care agency transfers  
a child from one foster home or other foster care placement to another

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. The family court act is amended by adding a new section  
2     1017-a to read as follows:  
3     S 1017-A. CHANGE OF PLACEMENT WITHOUT PRIOR COURT APPROVAL. 1.     WHEN  
4     THE COURT HAS REMANDED OR PLACED THE CHILD WITH THE LOCAL COMMISSIONER  
5     OF SOCIAL SERVICES IN A PROCEEDING UNDER THIS ARTICLE AND HAS DIRECTED  
6     PURSUANT TO SUBPARAGRAPH (III) OF PARAGRAPH (A) OF SUBDIVISION TWO OR  
7     PARAGRAPH (B) OF SUBDIVISION TWO OF SECTION ONE THOUSAND SEVENTEEN OF  
8     THIS PART, OR PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH (A) OF SECTION  
9     ONE THOUSAND FIFTY-FIVE OF THIS CHAPTER, OR PURSUANT TO CLAUSE (I) OF  
10    SUBPARAGRAPH (VIII) OF PARAGRAPH TWO OF SUBDIVISION (D) OF SECTION ONE  
11    THOUSAND EIGHTY-NINE OF THIS CHAPTER, THAT THE COMMISSIONER SHALL HAVE  
12    THE CHILD RESIDE IN A SPECIFIC CERTIFIED OR APPROVED FOSTER HOME, THE  
13    COMMISSIONER MAY NOT CHANGE THE CHILD'S FOSTER CARE PLACEMENT WITHOUT  
14    PRIOR COURT APPROVAL EXCEPT IN THOSE CIRCUMSTANCES SET FORTH IN PARA-  
15    GRAPH (D) OF SUBDIVISION TWO OF THIS SECTION.  
16    2. (A) WHEN THE COURT HAS REMANDED OR PLACED THE CHILD WITH THE LOCAL  
17    COMMISSIONER OF SOCIAL SERVICES IN A PROCEEDING UNDER THIS ARTICLE, OR  
18    EXTENDED SUCH PLACEMENT UNDER ARTICLE TEN-A OF THIS CHAPTER, WITH NO  
19    DIRECTION THAT THE COMMISSIONER SHALL HAVE THE CHILD RESIDE IN A SPECIF-  
20    IC CERTIFIED OR APPROVED FOSTER HOME, THE COMMISSIONER MAY CHANGE THE  
21    CHILD'S FOSTER CARE PLACEMENT WITHOUT PRIOR COURT APPROVAL, IN ACCORD-

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

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ANCE WITH PARAGRAPHS (B) AND (D) OF THIS SUBDIVISION AND THE SOCIAL SERVICES LAW AND APPLICABLE REGULATIONS.

(B) THE COMMISSIONER SHALL, AS SOON AS PRACTICABLE AFTER DETERMINING THAT A CHANGE OF FOSTER CARE PLACEMENT IS NECESSARY, BUT IN NO EVENT LATER THAN TEN DAYS PRIOR TO THE REMOVAL OF THE CHILD FROM HIS OR HER PRESENT FOSTER HOME OR OTHER FOSTER CARE PLACEMENT, NOTIFY THE COURT, THE COUNSEL FOR THE PARENT OR PARENTS OR OTHER PERSON OR PERSONS LEGALLY RESPONSIBLE FOR THE CARE OF THE CHILD, AND THE ATTORNEY FOR THE CHILD, BY PHONE, E-MAIL OR FACSIMILE TRANSMISSION, OF THE CHANGE OF PLACEMENT. IN SUCH NOTICE, THE COMMISSIONER SHALL PROVIDE THE DATE THE CHANGE OF PLACEMENT WILL TAKE PLACE, THE REASONS FOR THE CHANGE, AND THE NAME AND THE PHONE NUMBER OF A SOCIAL SERVICES OFFICIAL WHO MAY BE CONTACTED FOR FURTHER INFORMATION.

(C) IF TIMELY NOTICE PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION IS NOT PROVIDED, THE COMMISSIONER MAY NOT CHANGE THE FOSTER CARE PLACEMENT UNTIL AT LEAST TEN DAYS AFTER NOTICE HAS BEEN PROVIDED IN THE MANNER SET FORTH IN PARAGRAPH (B) OF THIS SUBDIVISION.

(D) WHEN THE HEALTH OR SAFETY OF THE CHILD REQUIRES THAT THE CHILD BE REMOVED IMMEDIATELY FROM THE FOSTER HOME OR OTHER FOSTER CARE PLACEMENT, OR WHEN THE FOSTER PARENT REQUESTS IMMEDIATE REMOVAL OF THE CHILD FROM THE FOSTER HOME, OR WHEN THE COMMISSIONER HAS OBTAINED THE CONSENT OF THE PARENT OR OTHER PERSON LEGALLY RESPONSIBLE FOR THE CARE OF THE CHILD AND THE ATTORNEY FOR THE CHILD, THE COMMISSIONER MAY REMOVE THE CHILD WITHOUT COURT APPROVAL REQUIRED BY SUBDIVISION ONE OF THIS SECTION AND WITHOUT PROVIDING NOTICE PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION. HOWEVER, SUCH NOTICE SHALL BE PROVIDED AS SOON AS PRACTICABLE AFTER REMOVAL.

3. WHEN THE COMMISSIONER HAS MADE A DETERMINATION TO DISCHARGE THE CHILD ON A TRIAL BASIS TO THE CUSTODY OF THE PARENT OR OTHER PERSON LEGALLY RESPONSIBLE FOR THE CHILD'S CARE, TIMELY ADVANCE NOTICE MUST BE PROVIDED TO THE COURT AND THE ATTORNEY FOR THE CHILD IN THE MANNER SET FORTH IN PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION.

4. NOTICE PURSUANT TO PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION NEED NOT BE PROVIDED WHEN THE COMMISSIONER HAS PREVIOUSLY PROVIDED, ON THE RECORD DURING THE PROCEEDINGS IN FAMILY COURT, NOTICE OF A CHANGE OF PLACEMENT, AND THE DATE AND REASONS FOR THE CHANGE.

S 2. Subdivision 3 of section 358-a of the social services law is amended by adding a new paragraph (g) to read as follows:

(G) (I) THE ORDER GRANTING THE PETITION OF A SOCIAL SERVICES OFFICIAL AND APPROVING AN INSTRUMENT EXECUTED PURSUANT TO SECTION THREE HUNDRED EIGHTY-FOUR-A OF THIS CHAPTER MAY DIRECT THAT THE COMMISSIONER SHALL HAVE THE CHILD RESIDE IN A SPECIFIC CERTIFIED OR APPROVED FOSTER HOME. IN THE EVENT THE COURT SO DIRECTS, THE COMMISSIONER MAY NOT CHANGE THE CHILD'S PLACEMENT WITHOUT PRIOR COURT APPROVAL EXCEPT IN THOSE CIRCUMSTANCES SET FORTH IN SUBPARAGRAPH (V) OF THIS PARAGRAPH.

(II) WHEN THE COURT HAS NOT SO DIRECTED, THE COMMISSIONER MAY CHANGE THE CHILD'S PLACEMENT WITHOUT PRIOR COURT APPROVAL, IN ACCORDANCE WITH SUBPARAGRAPHS (III) AND (V) OF THIS PARAGRAPH AND THIS CHAPTER AND APPLICABLE REGULATIONS.

(III) THE COMMISSIONER SHALL, AS SOON AS PRACTICABLE AFTER DETERMINING THAT A CHANGE OF FOSTER CARE PLACEMENT IS NECESSARY, BUT IN NO EVENT LATER THAN TEN DAYS PRIOR TO THE REMOVAL OF THE CHILD FROM HIS OR HER PRESENT FOSTER HOME OR OTHER FOSTER CARE PLACEMENT, NOTIFY THE COURT, THE COUNSEL FOR THE PARENT OR PARENTS OR OTHER PERSON OR PERSONS LEGALLY RESPONSIBLE FOR THE CHILD, AND THE ATTORNEY FOR THE CHILD, BY PHONE, E-MAIL OR FACSIMILE TRANSMISSION, OF THE CHANGE OF PLACEMENT. IN SUCH

1 NOTICE, THE COMMISSIONER SHALL PROVIDE THE DATE THE CHANGE OF PLACEMENT  
2 WILL TAKE PLACE, THE REASONS FOR THE CHANGE, AND THE NAME AND PHONE  
3 NUMBER OF A SOCIAL SERVICES OFFICIAL WHO MAY BE CONTACTED FOR FURTHER  
4 INFORMATION.

5 (IV) IF TIMELY NOTICE PURSUANT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH  
6 IS NOT PROVIDED, THE COMMISSIONER MAY NOT CHANGE THE PLACEMENT UNTIL AT  
7 LEAST TEN DAYS AFTER NOTICE HAS BEEN PROVIDED IN THE MANNER SET FORTH  
8 ABOVE.

9 (V) WHEN THE HEALTH OR SAFETY OF THE CHILD REQUIRES THAT THE CHILD BE  
10 REMOVED IMMEDIATELY FROM THE FOSTER HOME OR OTHER FOSTER CARE PLACEMENT,  
11 OR WHEN THE FOSTER PARENT REQUESTS IMMEDIATE REMOVAL OF THE CHILD FROM  
12 THE FOSTER HOME, OR WHEN THE COMMISSIONER HAS OBTAINED THE CONSENT OF  
13 THE PARENT OR OTHER PERSON LEGALLY RESPONSIBLE FOR THE CARE OF THE  
14 CHILD, AND THE ATTORNEY FOR THE CHILD, THE COMMISSIONER MAY REMOVE THE  
15 CHILD WITHOUT COURT APPROVAL REQUIRED BY SUBPARAGRAPH (I) OF THIS PARA-  
16 GRAPH AND WITHOUT PROVIDING NOTICE PURSUANT TO SUBPARAGRAPH (III) OF  
17 THIS PARAGRAPH. HOWEVER, SUCH NOTICE SHALL BE PROVIDED AS SOON AS PRAC-  
18 TICABLE AFTER REMOVAL.

19 (VI) WHEN THE COMMISSIONER HAS MADE A DETERMINATION TO DISCHARGE THE  
20 CHILD ON A TRIAL BASIS TO THE CUSTODY OF THE PARENT OR OTHER PERSON  
21 LEGALLY RESPONSIBLE FOR THE CHILD'S CARE, TIMELY ADVANCE NOTICE MUST BE  
22 PROVIDED TO THE COURT AND THE ATTORNEY FOR THE CHILD IN THE MANNER SET  
23 FORTH IN SUBPARAGRAPH (III) OF THIS PARAGRAPH.

24 (VII) NOTICE PURSUANT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH NEED NOT  
25 BE PROVIDED WHEN THE COMMISSIONER HAS PREVIOUSLY PROVIDED, ON THE RECORD  
26 DURING PROCEEDINGS IN FAMILY COURT, NOTICE OF A CONTEMPLATED CHANGE OF  
27 PLACEMENT, AND THE DATE AND REASONS FOR THE CHANGE.

28 S 3. Subparagraph (viii) of paragraph 2 of subdivision (d) of section  
29 1089 of the family court act is amended by adding a new clause (I) to  
30 read as follows:

31 (I) DIRECTING THAT THE COMMISSIONER SHALL HAVE THE CHILD RESIDE IN A  
32 SPECIFIC CERTIFIED OR APPROVED FOSTER HOME.

33 S 4. The family court act is amended by adding a new section 1090-a to  
34 read as follows:

35 S 1090-A. CHANGE OF PLACEMENT OF CHILDREN WHO HAVE BEEN FREED FOR  
36 ADOPTION. 1. WHEN THE COURT HAS DIRECTED PURSUANT TO ITEM (I) OF CLAUSE  
37 (B) OF SUBPARAGRAPH (VIII) OF PARAGRAPH TWO OF SUBDIVISION (D) OF  
38 SECTION ONE THOUSAND EIGHTY-NINE OF THIS ARTICLE THAT THE CHILD BE  
39 PLACED FOR ADOPTION IN THE FOSTER FAMILY HOME WHERE HE OR SHE RESIDES OR  
40 HAS RESIDED OR WITH ANY OTHER SUITABLE PERSON OR PERSONS, THE AGENCY TO  
41 WHICH GUARDIANSHIP AND CUSTODY HAS BEEN COMMITTED MAY NOT CHANGE SUCH  
42 CHILD'S FOSTER CARE PLACEMENT WITHOUT PRIOR COURT APPROVAL, EXCEPT IN  
43 THOSE CIRCUMSTANCES SET FORTH IN PARAGRAPH (D) OF SUBDIVISION TWO OF  
44 THIS SECTION.

45 2. (A) WHEN THE COURT HAS NOT DIRECTED THAT THE CHILD BE PLACED FOR  
46 ADOPTION IN A SPECIFIC FOSTER HOME, THE AGENCY TO WHICH GUARDIANSHIP AND  
47 CUSTODY HAS BEEN COMMITTED MAY CHANGE THE CHILD'S FOSTER HOME OR OTHER  
48 FOSTER CARE PLACEMENT WITHOUT PRIOR COURT APPROVAL, IN ACCORDANCE WITH  
49 PARAGRAPHS (B) AND (D) OF THIS SUBDIVISION AND THE SOCIAL SERVICES LAW  
50 AND APPLICABLE REGULATIONS.

51 (B) THE AGENCY SHALL, AS SOON AS PRACTICABLE AFTER DETERMINING THAT A  
52 CHANGE OF FOSTER CARE PLACEMENT IS NECESSARY, BUT IN NO EVENT LATER THAN  
53 TEN DAYS PRIOR TO THE REMOVAL OF THE CHILD FROM HIS OR HER PRESENT  
54 FOSTER HOME OR OTHER FOSTER CARE PLACEMENT, NOTIFY THE COURT, AND THE  
55 ATTORNEY FOR THE CHILD, BY PHONE, E-MAIL OR FACSIMILE TRANSMISSION, OF  
56 THE CHANGE OF PLACEMENT. IN SUCH NOTICE, THE AGENCY SHALL PROVIDE THE

1 DATE THE CHANGE OF PLACEMENT WILL TAKE PLACE, THE REASONS FOR THE  
2 CHANGE, AND THE NAME AND PHONE NUMBER OF A SOCIAL SERVICES OFFICIAL WHO  
3 MAY BE CONTACTED FOR FURTHER INFORMATION.

4 (C) IF TIMELY NOTICE PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION IS  
5 NOT PROVIDED, THE AGENCY MAY NOT CHANGE THE FOSTER CARE PLACEMENT UNTIL  
6 AT LEAST TEN DAYS AFTER NOTICE HAS BEEN PROVIDED IN THE MANNER SET FORTH  
7 IN PARAGRAPH (B) OF THIS SUBDIVISION.

8 (D) WHEN THE HEALTH OR SAFETY OF THE CHILD REQUIRES THAT THE CHILD BE  
9 REMOVED IMMEDIATELY FROM THE FOSTER HOME OR OTHER FOSTER CARE PLACEMENT,  
10 OR WHEN THE FOSTER PARENT REQUESTS IMMEDIATE REMOVAL OF THE CHILD FROM  
11 THE FOSTER HOME, OR WHEN THE AGENCY HAS OBTAINED THE CONSENT OF THE  
12 ATTORNEY FOR THE CHILD, THE AGENCY MAY REMOVE THE CHILD WITHOUT COURT  
13 APPROVAL REQUIRED BY SUBDIVISION ONE OF THIS SECTION AND WITHOUT PROVID-  
14 ING NOTICE PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION. HOWEVER, SUCH  
15 NOTICE SHALL BE PROVIDED AS SOON AS PRACTICABLE AFTER REMOVAL.

16 (E) NOTICE PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION NEED NOT BE  
17 PROVIDED WHEN THE AGENCY HAS PREVIOUSLY PROVIDED, ON THE RECORD DURING  
18 PROCEEDINGS IN FAMILY COURT, NOTICE OF A CHANGE OF PLACEMENT, AND THE  
19 DATE AND REASONS FOR THE CHANGE.

20 S 5. This act shall take effect on the ninetieth day after it shall  
21 have become a law; provided, however, that effective immediately, the  
22 addition, amendment and/or repeal of any rule or regulation necessary  
23 for the implementation of this act on its effective date are authorized  
24 and directed to be made and completed on or before such effective date.