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

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I N S E N A T E

June 5, 2012

Introduced by Sen. GALLIVAN -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the family court act, in relation to non-respondent parents in child protective and permanency proceedings in family court

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

Section 1. Section 1012 of the family court act is amended by adding three new subdivisions (l), (m) and (n) to read as follows:

(L) "PARENT" MEANS A PERSON WHO IS RECOGNIZED UNDER THE LAWS OF THE STATE OF NEW YORK TO BE THE CHILD'S LEGAL PARENT, WHICH MAY INCLUDE (I) THE BIRTH MOTHER OF THE CHILD, (II) THE SPOUSE OF THE PARENT OF ANY CHILD BORN IN WEDLOCK, (III) A PARENT LISTED ON THE BIRTH CERTIFICATE, (IV) AN ADOPTIVE PARENT OF THE CHILD, (V) THE FATHER OF THE CHILD AS ESTABLISHED THROUGH A VALIDLY EXECUTED ACKNOWLEDGMENT OF PATERNITY, OR (VI) THE FATHER OF THE CHILD AS ESTABLISHED THROUGH A COURT ORDER DECLARING HIS PATERNITY.

(M) "ALLEGED PARENT" MEANS ANY PERSON WHO IS NOT RECOGNIZED TO BE THE CHILD'S LEGAL PARENT UNDER THE LAWS OF THE STATE OF NEW YORK BUT WHO (I) HAS FILED WITH A PUTATIVE FATHER REGISTRY, (II) HAS A PENDING PATERNITY PETITION, (III) WAS MARRIED TO THE CHILD'S PARENT WITHIN SIX MONTHS AFTER THE CHILD'S BIRTH, OR (IV) HAS BEEN IDENTIFIED BY THE CHILD'S PARENT IN A WRITTEN SWORN STATEMENT OR BY THE CHILD AS A PARENT.

(N) "RELATIVE" MEANS ANY PERSON WHO IS RELATED TO THE CHILD BY BLOOD, MARRIAGE OR ADOPTION AND WHO IS NOT A PARENT OR ALLEGED PARENT OF THE CHILD.

S 2. Subdivision 1, subparagraphs (i) and (ii) of paragraph (a) of subdivision 2 and subdivision 3 of section 1017 of the family court act, subdivision 1 as amended by section 10 of part A of chapter 3 of the laws of 2005, the opening paragraph of subdivision 1 as separately amended by chapter 671 of the laws of 2005, subparagraphs (i) and (ii) of paragraph (a) of subdivision 2 as amended and subdivision 3 as added by chapter 519 of the laws of 2008, are amended to read as follows:

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

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1. In any proceeding under this article, when the court determines that a child must be removed from his or her home, pursuant to part two of this article, or placed, pursuant to section one thousand fifty-five of this article, the court shall direct the local commissioner of social services to conduct an immediate investigation to locate any non-respondent parent OR NON-RESPONDENT ALLEGED PARENT of the child and any relatives of the child, including all of the child's grandparents, all suitable relatives identified by any respondent parent or any non-respondent parent and any relative OR OTHER SUITABLE PERSON identified by a child over the age of five as a [relative] PERSON who plays or has played a significant positive role in his or her life[, and]. THE LOCAL COMMISSIONER SHALL inform them of the pendency of the proceeding and of the opportunity [for becoming foster parents or for seeking] TO SEEK custody or care of the child AND, IN THE CASE OF RELATIVES AND OTHER SUITABLE PERSONS, THE OPPORTUNITY TO BECOME FOSTER PARENTS, WHO MAY SEEK, [and that] TO ADOPT the child [may be adopted by foster parents] if attempts at reunification with the birth parent are not required or are unsuccessful. RULES OF COURT SHALL SPECIFY THE CONTENTS OF THE NOTICE. The local commissioner of social services shall record the results of such investigation, including, but not limited to, the name, last known address, social security number, employer's address and any other identifying information to the extent known regarding any non-respondent parent, in the uniform case record maintained pursuant to section four hundred nine-f of the social services law. [For the purpose of this section, "non-respondent parent" shall include a person entitled to notice of the pendency of the proceeding and of the right to intervene as an interested party pursuant to subdivision (d) of section one thousand thirty-five of this article, and a non-custodial parent entitled to notice and the right to enforce visitation rights pursuant to subdivision (e) of section one thousand thirty-five of this article.] The court shall determine:

(a) whether there is a suitable non-respondent parent [or other person related to the child], RELATIVE OR OTHER SUITABLE PERSON with whom such child may appropriately reside; and

(b) in the case of a relative OR OTHER SUITABLE PERSON, whether such [relative] INDIVIDUAL seeks approval as a foster parent pursuant to the social services law for the purposes of providing care for such child, or wishes to provide free care and custody for the child during the pendency of any orders pursuant to this article.

(i) grant [an] A TEMPORARY order of custody or guardianship to such non-respondent parent, [other] relative or other suitable person pursuant to A PETITION FILED UNDER ARTICLE SIX OF THIS ACT PENDING FURTHER ORDER OF THE COURT, OR AT DISPOSITION OF THE PROCEEDING, GRANT A FINAL ORDER OF CUSTODY OR GUARDIANSHIP TO SUCH NON-RESPONDENT PARENT, RELATIVE OR OTHER SUITABLE PERSON PURSUANT TO section one thousand fifty-five-b of this article; or

(ii) place the child directly in the [custody] CARE of such non-respondent parent, other relative or other suitable person pursuant to this article during the pendency of the proceeding or until further order of the court, whichever is earlier and conduct such other and further investigations as the court deems necessary; or

3. An order placing a child [with] IN THE CARE OF a NON-RESPONDENT PARENT, relative or other suitable person pursuant to this section may not be granted unless the NON-RESPONDENT PARENT, relative or other suitable person consents to the jurisdiction of the court. The court may [place the person with whom the child has been directly placed under

supervision during the pendency of the proceeding. Such supervision shall be provided by] ORDER THAT a child protective agency, social services official or duly authorized agency SUPERVISE THE CHILD DURING THE PENDENCY OF THE PROCEEDING. [The court also may issue a temporary order of protection under subdivision (f) of section one thousand twenty-two, section one thousand twenty-three or section one thousand twenty-nine of this article.] An order of supervision issued pursuant to this subdivision shall set forth the terms and conditions that the NON-RESPONDENT PARENT, relative or OTHER suitable person must meet and the actions that the child protective agency, social services official or duly authorized agency must take to exercise such supervision. THE COURT ALSO MAY ISSUE A TEMPORARY ORDER OF PROTECTION UNDER SUBDIVISION (F) OF SECTION ONE THOUSAND TWENTY-TWO, SECTION ONE THOUSAND TWENTY-THREE OR SECTION ONE THOUSAND TWENTY-NINE OF THIS ARTICLE.

S 3. Section 1022-a of the family court act, as added by chapter 336 of the laws of 1990, is amended to read as follows:

S 1022-a. Preliminary orders; notice and appointment of counsel. At a hearing held pursuant to section [ten hundred] ONE THOUSAND twenty-two of this [act] ARTICLE at which the respondent OR NON-RESPONDENT PARENT is present, the court shall advise the respondent of the allegations in the application and shall appoint counsel for the respondent OR NON-RESPONDENT PARENT pursuant to section two hundred sixty-two of this act where the respondent OR NON-RESPONDENT PARENT is indigent.

S 4. Subdivision (d) of section 1027 of the family court act, as added by chapter 962 of the laws of 1970, is amended to read as follows:

(d) Upon such hearing, the court may, for good cause shown, release the child to the [custody] CARE of his OR HER parent or other person legally responsible for his OR HER care, pending a final order of disposition, in accord with section one thousand [fifty-four] SEVENTEEN OF THIS ARTICLE.

S 5. The opening paragraph of subdivision (d) of section 1035 of the family court act, as amended by chapter 526 of the laws of 2003, is amended to read as follows:

Where the respondent is not the child's parent, service of the summons and petition shall also be ordered on both of the child's parents; where only one of the child's parents is the respondent, service of the summons and petition shall also be ordered on the child's other parent. The summons and petition shall be accompanied by a notice of pendency of the child protective proceeding advising the parents or parent of the right to appear and participate in the proceeding as an interested party intervenor for the purpose of seeking temporary and permanent custody of the child, and to participate thereby in all arguments and hearings insofar as they affect the temporary [custody] CARE of the child during fact-finding proceedings, and in all phases of dispositional proceedings. The notice shall also ADVISE THE PARENT OR PARENTS OF THE RIGHT TO COUNSEL, INCLUDING ASSIGNED COUNSEL IF INDIGENT, AND ALSO indicate that:

S 6. Paragraphs (ii) and (vi) of subdivision (a) of section 1052 of the family court act, paragraph (ii) as amended and paragraph (vi) as added by chapter 519 of the laws of 2008, are amended to read as follows:

(ii) releasing the child to the [custody] CARE of [his parents or other person legally responsible] A PARENT OR PARENTS OR LEGAL CUSTODIAN OR GUARDIAN in accord with section one thousand fifty-four of this part; or

(vi) granting custody of the child to A PARENT OR PARENTS, relatives or suitable persons pursuant to section one thousand fifty-five-b of this part.

S 7. Section 1054 of the family court act, as amended by chapter 1039 of the laws of 1973, subdivision (a) as amended by chapter 41 of the laws of 2010 and subdivision (b) as amended by chapter 458 of the laws of 1989, is amended to read as follows:

S 1054. Release to [custody] CARE of parent or [other person responsible for care] LEGAL CUSTODIAN OR GUARDIAN; supervision or order of protection. (a) If the order of disposition releases the child to the [custody] CARE of his or her parent or [other person legally responsible for his or her care] LEGAL CUSTODIAN OR GUARDIAN at the time of the filing of the petition, the court may [place] REQUIRE the [person to whose custody the child is released under] PARENT OR LEGAL CUSTODIAN OR GUARDIAN TO CONSENT TO THE JURISDICTION OF THE COURT FOR THE PERIOD IN WHICH THE COURT ORDERS supervision of THE CHILD BY a child protective agency or [of] a social services official or duly authorized agency[,] IN ACCORDANCE WITH SUBDIVISION (B) OF THIS SECTION. THE COURT MAY ALSO ENTER AN ORDER OF SUPERVISION OF A RESPONDENT PARENT UNDER SECTION ONE THOUSAND FIFTY-SEVEN OF THIS PART or may enter an order of protection under section one thousand fifty-six OF THIS PART, or both, IN CONJUNCTION WITH THE ISSUANCE OF AN ORDER UNDER THIS SECTION. An order of supervision OF THE CHILD entered under this section shall set forth the terms and conditions [of such supervision] that the [respondent] NON-RESPONDENT PARENT, LEGAL CUSTODIAN OR GUARDIAN must meet and the actions that the child protective agency, social services official or duly authorized agency must take to exercise such supervision. Except as provided for herein, in any order issued pursuant to this section, the court may require the child protective agency to make progress reports to the court, the parties, and the child's attorney on the implementation of such order. Where the order of disposition is issued upon the consent of the parties and the child's attorney, such agency shall report to the court, the parties and the child's attorney no later than ninety days after the issuance of the order, unless the court determines that the facts and circumstances of the case do not require such report to be made.

(b) Rules of court shall define permissible terms and conditions of THE supervision OF THE CHILD under this section. The duration of any period of supervision OF THE CHILD shall be for an initial period of no more than one year and the court may, at the expiration of that period, upon a hearing and for good cause shown, [make successive extensions of] EXTEND such supervision FOR A PERIOD of up to one year [each] AND MAY MAKE SUCCESSIVE EXTENSIONS OF SUCH SUPERVISION FOR PERIODS OF UP TO ONE YEAR EACH UPON A SHOWING OF EXTRAORDINARY CIRCUMSTANCES.

S 8. The section heading and subdivision (a) of section 1055-b of the family court act, as amended by section 7 of part F of chapter 58 of the laws of 2010, are amended to read as follows:

Custody or guardianship with A PARENT OR PARENTS, relatives or suitable persons pursuant to article six of this act or guardianship with [such a person] RELATIVES OR SUITABLE PERSONS pursuant to article seventeen of the surrogate's court procedure act. (a) At the conclusion of the dispositional hearing under this article, the court may enter an order of disposition granting custody or guardianship of the child to a PARENT, relative or other suitable person under article six of this act or an order of guardianship of the child to [such] a RELATIVE OR SUIT-

ABLE person under article seventeen of the surrogate's court procedure act if:

(i) the PARENT, relative or suitable person has filed a petition for custody or guardianship of the child pursuant to article six of this act or, IN THE CASE OF A RELATIVE OR SUITABLE PERSON, a petition for guardianship of the child under article seventeen of the surrogate's court procedure act; and

(ii) the court finds that granting custody or guardianship of the child to the PARENT, relative or suitable person is in the best interests of the child and that the safety of the child will not be jeopardized if the respondent or respondents under the child protective proceeding are no longer under supervision or receiving services. In determining whether the best interests of the child will be promoted by the granting of guardianship of the child to a relative who has cared for the child as a foster parent, the court shall give due consideration to the permanency goal of the child, the relationship between the child and the relative, and whether the relative and the social services district have entered into an agreement to provide kinship guardianship assistance payments for the child to the relative under title ten of article six of the social services law, and, if so, whether the fact-finding hearing pursuant to section one thousand fifty-one of this part and a permanency hearing pursuant to section one thousand eighty-nine of this chapter [has] HAVE occurred and whether compelling reasons exist for determining that the return home of the child and the adoption of the child are not in the best interests of the child and are, therefore, not appropriate permanency options; and

(iii) the court finds that granting custody or guardianship of the child to the PARENT, relative or suitable person under article six of this act or granting guardianship of the child to the relative or other suitable person under article seventeen of the surrogate's court procedure act will provide the child with a safe and permanent home; and

(iv) all parties to the child protective proceeding consent to the granting of custody or guardianship under article six of this act or the granting of guardianship under article seventeen of the surrogate's court procedure; or

(v) after a consolidated dispositional hearing on the child protective petition and the petition under article six of this act or under article seventeen of the surrogate's court procedure act[;] WHERE NOT ALL PARTIES CONSENT TO THE GRANTING OF CUSTODY OR GUARDIANSHIP:

(A) if a parent or parents [fail] FAILS to consent to the granting of custody or guardianship TO THE RELATIVE OR OTHER SUITABLE PERSON under article six of this act or the granting of guardianship under article seventeen of the surrogate's court procedure act, the court finds that extraordinary circumstances exist that support granting an order of custody or guardianship TO THE RELATIVE OR OTHER SUITABLE PERSON AND THAT THE GRANTING OF THE ORDER WILL SERVE THE CHILD'S BEST INTERESTS; or

(B) if a party other than the parent or parents [fail] FAILS to consent to the granting of custody or guardianship TO THE RELATIVE OR OTHER SUITABLE PERSON under article six of this act or the granting of guardianship under article seventeen of the surrogate's court procedure act, the court finds that granting custody or guardianship of the child to the relative or suitable person is in the best interests of the child[.]; OR

(C) WHERE A PARENT IS PETITIONING FOR CUSTODY UNDER ARTICLE SIX OF THIS ACT, IF A PARTY OTHER THAT THE OTHER PARENT FAILS TO CONSENT TO THE GRANTING OF CUSTODY, THE COURT FINDS EITHER THAT THE OBJECTING PARTY

FAILED TO ESTABLISH EXTRAORDINARY CIRCUMSTANCES, OR, IF EXTRAORDINARY CIRCUMSTANCES WERE ESTABLISHED, THAT GRANTING CUSTODY TO THE PETITIONING PARENT WOULD NONETHELESS BE IN THE CHILD'S BEST INTERESTS; OR

(D) WHERE A PARENT IS PETITIONING FOR CUSTODY UNDER ARTICLE SIX OF THIS ACT, IF THE OTHER PARENT FAILS TO CONSENT TO THE GRANTING OF CUSTODY TO THE PETITIONING PARENT, THE COURT FINDS THAT GRANTING CUSTODY TO ONE OR THE OTHER OF THE PARENTS IS IN THE CHILD'S BEST INTERESTS.

S 9. This act shall take effect on the ninetieth day after it shall have become a law; provided, however that the amendments to section 1055-b of the family court act, made by section eight of this act, shall take effect on the same date and in the same manner as such section takes effect.