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

5203--A

2013-2014 Regular Sessions

I N S E N A T E

May 14, 2013

Introduced by Sen. FELDER -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the family court act and the domestic relations law, 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 651 of the family court act is amended by adding a new subdivision (c-1) to read as follows:

(C-1) WHERE A PROCEEDING FILED PURSUANT TO ARTICLE TEN OR TEN-A OF THIS ACT IS PENDING AT THE SAME TIME AS A PROCEEDING BROUGHT IN THE FAMILY COURT PURSUANT TO THIS ARTICLE, THE COURT PRESIDING OVER THE PROCEEDING UNDER ARTICLE TEN OR TEN-A OF THIS ACT MAY JOINTLY HEAR THE HEARING ON THE CUSTODY AND VISITATION PETITION UNDER THIS ARTICLE AND THE DISPOSITIONAL HEARING ON THE PETITION UNDER ARTICLE TEN OR THE PERMANENCY HEARING UNDER ARTICLE TEN-A OF THIS ACT; PROVIDED, HOWEVER, THE COURT MUST DETERMINE THE CUSTODY AND VISITATION PETITION IN ACCORDANCE WITH THE TERMS OF THIS ARTICLE.

S 2. 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.

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

(N) "SUITABLE PERSON" MEANS ANY PERSON WHO PLAYS OR HAS PLAYED A SIGNIFICANT POSITIVE ROLE IN THE CHILD'S LIFE OR IN THE LIFE OF THE CHILD'S FAMILY.

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

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S 3. Subdivision 1, paragraph (a) of subdivision 2 and subdivision 3 of section 1017 of the family court act, subdivision 1 and paragraph (a) of subdivision 2 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:

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[,]:

(A) the court shall direct the local commissioner of social services to conduct an immediate investigation to locate any non-respondent parent of the child and any relatives of the child, including all of the child's grandparents, all [suitable] relatives OR SUITABLE PERSONS identified by any respondent parent or any non-respondent parent and any relative identified by a child over the age of five as a relative who plays or has played a significant positive role in his or her life[, and]. THE LOCAL COMMISSIONER SHALL inform them IN WRITING of the pendency of the proceeding and of the opportunity for [becoming foster parents or for seeking custody or care] NON-RESPONDENT PARENTS TO SEEK TEMPORARY RELEASE of the child[, and that the child may be adopted by foster parents if attempts at reunification with the birth parent are not required or are unsuccessful] UNDER THIS ARTICLE OR CUSTODY UNDER ARTICLE SIX OF THIS ACT OR FOR RELATIVES TO SEEK TO BECOME FOSTER PARENTS OR TO PROVIDE FREE CARE UNDER THIS ARTICLE OR TO SEEK CUSTODY PURSUANT TO ARTICLE SIX OF THIS ACT; OR FOR SUITABLE PERSONS TO BECOME FOSTER PARENTS OR PROVIDE FREE CARE UNDER THIS ARTICLE OR TO SEEK GUARDIANSHIP PURSUANT TO ARTICLE SIX OF THIS ACT. UNIFORM STATEWIDE RULES OF COURT SHALL SPECIFY THE CONTENTS OF THE NOTICE CONSISTENT WITH THE PROVISIONS OF THIS SECTION. The local commissioner of social services shall [record] REPORT the results of such investigation, OR INVESTIGATIONS TO THE COURT AND PARTIES, INCLUDING THE ATTORNEY FOR THE CHILD. THE LOCAL COMMISSIONER SHALL ALSO RECORD THE RESULTS OF THE INVESTIGATION OR INVESTIGATIONS, 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.

(B) THE COURT SHALL ALSO DIRECT THE LOCAL COMMISSIONER OF SOCIAL SERVICES TO CONDUCT AN INVESTIGATION TO LOCATE ANY PERSON WHO IS NOT RECOGNIZED TO BE THE CHILD'S LEGAL PARENT AND DOES NOT HAVE THE RIGHTS OF A LEGAL PARENT UNDER THE LAWS OF THE STATE OF NEW YORK BUT WHO (I) HAS FILED WITH A PUTATIVE FATHER REGISTRY AN INSTRUMENT ACKNOWLEDGING PATERNITY OF THE CHILD, PURSUANT TO SECTION 4-1.2 OF THE ESTATES, POWERS AND TRUSTS LAW, OR (II) HAS A PENDING PATERNITY PETITION, OR (III) HAS BEEN IDENTIFIED AS A PARENT OF THE CHILD BY THE CHILD'S OTHER PARENT IN A WRITTEN SWORN STATEMENT. THE LOCAL COMMISSIONER OF SOCIAL SERVICES SHALL REPORT THE RESULTS OF SUCH INVESTIGATION TO THE COURT AND PARTIES, INCLUDING THE ATTORNEY FOR THE CHILD.

(C) The court shall determine:

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

[(b)] (II) in the case of a relative OR 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.

(a) where the court, AFTER A REVIEW OF THE REPORTS OF THE SEX OFFENDER REGISTRY ESTABLISHED AND MAINTAINED PURSUANT TO SECTION ONE HUNDRED SIXTY-EIGHT-B OF THE CORRECTION LAW, REPORTS OF THE STATEWIDE COMPUTERIZED REGISTRY OF ORDERS OF PROTECTION ESTABLISHED AND MAINTAINED PURSUANT TO SECTION TWO HUNDRED TWENTY-ONE-A OF THE EXECUTIVE LAW, RELATED DECISIONS IN COURT PROCEEDINGS UNDER THIS ARTICLE AND ALL WARRANTS ISSUED UNDER THIS ACT, determines that the child may APPROPRIATELY reside with a [suitable] non-respondent parent or other relative or [other] suitable person, either:

(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 SUITABLE PERSON PURSUANT TO ARTICLE SIX OF THIS ACT AND section one thousand fifty-five-b of this article; or

(ii) [place] TEMPORARILY RELEASE the child directly [in the custody of] TO such non-respondent parent[, other] OR TEMPORARILY PLACE THE CHILD WITH A 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. THE COURT MAY DIRECT THE COMMISSIONER OF SOCIAL SERVICES, PURSUANT TO REGULATIONS OF THE OFFICE OF CHILDREN AND FAMILY SERVICES, TO COMMENCE AN INVESTIGATION OF THE HOME OF SUCH NON-RESPONDENT PARENT, RELATIVE OR SUITABLE PERSON WITHIN TWENTY-FOUR HOURS AND TO REPORT THE RESULTS TO THE COURT AND THE PARTIES, INCLUDING THE ATTORNEY FOR THE CHILD. IF THE HOME OF A NON-RESPONDENT PARENT, RELATIVE OR SUITABLE PERSON, IS FOUND UNQUALIFIED AS APPROPRIATE FOR THE TEMPORARY RELEASE OR PLACEMENT OF THE CHILD UNDER THIS ARTICLE, THE LOCAL COMMISSIONER SHALL REPORT SUCH FACT AND THE REASONS THEREFOR TO THE COURT AND THE PARTIES, INCLUDING THE ATTORNEY FOR THE CHILD, FORTHWITH; or

(iii) remand or place the child, as applicable, with the local commissioner of social services and direct such commissioner to have the child reside with such relative or [other] suitable person and further direct such commissioner pursuant to regulations of the office of children and family services, to commence an investigation of the home of such relative or other suitable person within twenty-four hours 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 AND THE REASONS THEREAFTER to the court AND THE PARTIES, INCLUDING THE ATTORNEY FOR THE CHILD, forthwith.

3. An order [placing] TEMPORARILY RELEASING a child [with] TO A NON-RESPONDENT PARENT OR PARENTS, OR TEMPORARILY PLACING A CHILD WITH a relative or RELATIVES OR other suitable person OR PERSONS pursuant to SUBPARAGRAPH (II) OF PARAGRAPH (A) OF SUBDIVISION TWO OF this section OR

REMANDING OR PLACING A CHILD WITH A LOCAL COMMISSIONER OF SOCIAL SERVICES TO RESIDE WITH A RELATIVE OR RELATIVES OR SUITABLE PERSON OR PERSONS AS FOSTER PARENTS PURSUANT TO SUBPARAGRAPH (III) OF PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION may not be granted unless the [relative or other suitable] person [consents] OR PERSONS TO WHOM THE CHILD IS RELEASED, REMANDED OR PLACED SUBMITS to the jurisdiction of the court WITH RESPECT TO THE CHILD. The [court] ORDER SHALL SET FORTH THE TERMS AND CONDITIONS APPLICABLE TO SUCH PERSON OR PERSONS AND CHILD PROTECTIVE AGENCY, SOCIAL SERVICES OFFICIAL AND DULY AUTHORIZED AGENCY WITH RESPECT TO THE CHILD AND 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 a] INCLUDE, BUT MAY NOT BE LIMITED TO, A DIRECTION FOR SUCH PERSON OR PERSONS TO COOPERATE IN MAKING THE CHILD AVAILABLE FOR COURT-ORDERED VISITATION WITH RESPONDENTS, SIBLINGS AND OTHERS AND FOR APPOINTMENTS WITH THE CHILD'S ATTORNEY, child protective agency, social services official [or], duly authorized agency, CLINICIAN OR OTHER INDIVIDUAL OR PROGRAM PROVIDING SERVICES TO 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 AND AN ORDER DIRECTING THAT SERVICES BE PROVIDED PURSUANT TO SECTION ONE THOUSAND FIFTEEN-A OF THIS PART. [An order of supervision issued pursuant to this subdivision shall set forth the terms and conditions that the relative or 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.]

S 4. 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] PART at which the respondent is present, the court shall advise the respondent AND ANY NON-RESPONDENT PARENT WHO IS PRESENT of the allegations in the application and shall appoint counsel for [the respondent pursuant to] EACH IN ACCORDANCE WITH section two hundred sixty-two of this act [where the respondent is indigent], UNLESS WAIVED.

S 5. Subparagraph (C) of paragraph (i) of subdivision (b) and subdivision (d) of section 1027 of the family court act, subparagraph (C) of paragraph (i) of subdivision (b) as amended by chapter 671 of the laws of 2005 and subdivision (d) as added by chapter 962 of the laws of 1970, are amended to read as follows:

(C) [in the custody of] WITH a relative or suitable person other than the respondent.

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

S 6. 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 RELEASE OF THE CHILD UNDER THIS ARTICLE OR custody of the child UNDER ARTICLE SIX OF THIS ACT, and to participate thereby in all arguments and hearings insofar as they affect the temporary RELEASE OR custody 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, PURSUANT TO SECTION TWO HUNDRED SIXTY-TWO OF THIS ACT, AND ALSO indicate that:

S 7. Subdivision (a) of section 1052 of the family court act, as amended by chapter 519 of the laws of 2008, is amended to read as follows:

(a) At the conclusion of a dispositional hearing under this article, the court shall enter an order of disposition directing one or more of the following:

(i) suspending judgment in accord with section one thousand fifty-three of this part; or

(ii) releasing the child to [the custody of his] A NON-RESPONDENT PARENT OR parents or [other person legally responsible] LEGAL CUSTODIAN OR CUSTODIANS OR GUARDIAN OR GUARDIANS, WHO IS NOT OR ARE NOT RESPONDENTS IN THE PROCEEDING, in accord with section one thousand fifty-four of this part; or

(iii) placing the child in accord with section one thousand fifty-five of this part; or

(iv) making an order of protection in accord with SECTION one thousand fifty-six of this part; or

(v) RELEASING THE CHILD TO THE RESPONDENT OR RESPONDENTS OR placing the respondent OR RESPONDENTS under supervision, OR BOTH, in accord with section one thousand fifty-seven of this part; or

(vi) granting custody of the child to A RESPONDENT PARENT OR PARENTS, A RELATIVE OR relatives or A suitable PERSON OR persons pursuant to ARTICLE SIX OF THIS ACT AND section one thousand fifty-five-b of this part; OR

(VII) GRANTING CUSTODY OF THE CHILD TO A NON-RESPONDENT PARENT OR PARENTS PURSUANT TO ARTICLE SIX OF THIS ACT.

However, the court shall not enter an order of disposition combining placement of the child under paragraph (iii) of this subdivision with a disposition under paragraph (i) or (ii) of this subdivision. An order granting custody of the child pursuant to paragraph (vi) OR (VII) of this subdivision shall not be combined with any other disposition under this subdivision.

S 8. 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 of] NON-RESPONDENT parent or [other person responsible for care; supervision or order of protection] LEGAL CUSTODIAN OR GUARDIAN. (a) [If the] AN order of disposition [releases] MAY RELEASE the child FOR A DESIGNATED PERIOD OF UP TO ONE YEAR to [the custody of his or her] A NON-RESPONDENT parent or [other] PARENTS OR A person [legally responsible for his or her care] OR PERSONS WHO HAD BEEN THE CHILD'S LEGAL CUSTODIAN OR GUARDIAN at the time of the filing of the petition, [the] AND WHO IS NOT OR ARE NOT RESPONDENTS IN THE PROCEEDING UNDER THIS ARTICLE. AN ORDER UNDER THIS SECTION MAY BE EXTENDED UPON A HEARING FOR A PERIOD OF UP TO ONE YEAR FOR GOOD CAUSE.

(B) THE court may [place] REQUIRE the person OR PERSONS to [whose custody] WHOM the child is released under [supervision of a] THIS SECTION TO SUBMIT TO THE JURISDICTION OF THE COURT WITH RESPECT TO THE CHILD FOR THE PERIOD OF THE DISPOSITION OR AN EXTENSION THEREOF. THE ORDER MAY INCLUDE, BUT IS NOT LIMITED TO, A DIRECTION FOR SUCH PERSON OR PERSONS TO COOPERATE IN MAKING THE CHILD AVAILABLE FOR COURT-ORDERED VISITATION WITH RESPONDENTS, SIBLINGS AND OTHERS AND FOR APPOINTMENTS WITH THE CHILD'S ATTORNEY, child protective agency [or of a], social services official or duly authorized agency, CLINICIAN OR OTHER INDIVIDUAL OR PROGRAM PROVIDING SERVICES TO THE CHILD. THE ORDER SHALL SET FORTH THE TERMS AND CONDITIONS APPLICABLE TO SUCH NON-RESPONDENT AND CHILD PROTECTIVE AGENCY, SOCIAL SERVICES OFFICIAL AND DULY AUTHORIZED AGENCY WITH RESPECT TO THE CHILD.

(C) IN CONJUNCTION WITH AN ORDER RELEASING THE CHILD TO A NON-RESPONDENT PARENT, LEGAL CUSTODIAN OR GUARDIAN UNDER THIS SUBDIVISION, THE COURT MAY ALSO ISSUE ANY OR ALL OF THE FOLLOWING ORDERS: AN ORDER OF SUPERVISION OF A RESPONDENT PARENT UNDER SECTION ONE THOUSAND FIFTY-SEVEN, AN ORDER DIRECTING THAT SERVICES BE PROVIDED TO THE RESPONDENT PARENT UNDER SECTION ONE THOUSAND FIFTEEN-A or [may enter] an order of protection under section one thousand fifty-six[, or both] OF THIS ARTICLE. An order of supervision OF THE RESPONDENT entered under this [section shall set forth the terms and conditions of such supervision that the respondent must meet and the actions that the child protective agency, social services official or duly authorized agency must take to exercise such supervision] SUBDIVISION MAY BE EXTENDED UPON A HEARING FOR A PERIOD OF UP TO ONE YEAR FOR GOOD CAUSE.

(D) 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 AND NO LATER THAN SIXTY DAYS PRIOR TO THE EXPIRATION 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 supervision under this section. The duration of any period of supervision 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 such supervision of up to one year each.]

S 9. The section heading and subdivisions (a) and (b) 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 and two new subdivisions (a-1) and (a-2) are added 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) CUSTODY OR GUARDIANSHIP WITH RESPONDENT PARENT OR PARENTS, RELATIVES OR SUITABLE PERSONS. 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 RESPONDENT PARENT OR PARENTS, AS DEFINED IN SUBDIVISION (1) OF SECTION ONE THOUSAND TWELVE OF THIS ARTICLE, OR A relative OR RELATIVES or other suitable person OR PERSONS [under] PURSUANT TO

article six of this act or an order of guardianship of the child to [such] a RELATIVE OR RELATIVES OR SUITABLE person OR PERSONS under article seventeen of the surrogate's court procedure act if THE FOLLOWING CONDITIONS HAVE BEEN MET:

(i) the RESPONDENT PARENT OR PARENTS, relative OR RELATIVES or suitable person OR PERSONS has OR HAVE 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 RELATIVES OR SUITABLE PERSON OR PERSONS, 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 relative or suitable] SUCH person OR PERSONS 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 RESPONDENT 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 ACT; or [(v)], IF ANY OF THE PARTIES OBJECT TO THE GRANTING OF CUSTODY OR GUARDIANSHIP, THE COURT HAS MADE THE FOLLOWING FINDINGS after a [consolidated] JOINT 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[;]:

(A) if a RELATIVE OR RELATIVES OR SUITABLE PERSON OR PERSONS HAVE FILED A PETITION FOR CUSTODY OR GUARDIANSHIP AND A parent or parents fail to 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 act] PETITION, the court finds that THE RELATIVE OR RELATIVES OR SUITABLE PERSON OR PERSONS HAVE DEMONSTRATED THAT extraordinary circumstances exist that support granting an order of custody or guardianship TO THE RELATIVE OR RELATIVES OR SUITABLE PERSON OR PERSONS AND THAT THE GRANTING OF THE ORDER WILL SERVE THE CHILD'S BEST INTERESTS; or

(B) if a RELATIVE OR RELATIVES OR SUITABLE PERSON OR PERSONS HAVE FILED A PETITION FOR CUSTODY OR GUARDIANSHIP AND A party other than the parent or parents fail to consent to the granting of [custody or guardi-

anship under article six of this act or] the PETITION [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 RELATIVES or suitable person OR PERSONS is in the best interests of the child; OR

(C) IF A RESPONDENT PARENT HAS FILED A PETITION FOR CUSTODY UNDER ARTICLE SIX OF THIS ACT AND A PARTY WHO IS NOT A PARENT OF THE CHILD OBJECTS TO THE GRANTING OF THE PETITION, THE COURT FINDS EITHER THAT THE OBJECTING PARTY HAS FAILED TO ESTABLISH EXTRAORDINARY CIRCUMSTANCES, OR, IF THE OBJECTING PARTY HAS ESTABLISHED EXTRAORDINARY CIRCUMSTANCES, THAT GRANTING CUSTODY TO THE PETITIONING RESPONDENT PARENT WOULD NONETHELESS BE IN THE CHILD'S BEST INTERESTS; OR

(D) IF A RESPONDENT PARENT HAS FILED A PETITION FOR CUSTODY UNDER ARTICLE SIX OF THIS ACT AND THE OTHER PARENT OBJECTS TO THE GRANTING OF THE PETITION, THE COURT FINDS THAT GRANTING CUSTODY TO THE PETITIONING RESPONDENT PARENT IS IN THE CHILD'S BEST INTERESTS.

(A-1) CUSTODY AND VISITATION PETITION OF NON-RESPONDENT PARENT UNDER ARTICLE SIX OF THIS ACT. WHERE A PROCEEDING FILED BY THE NON-RESPONDENT PARENT PURSUANT TO ARTICLE SIX OF THIS ACT IS PENDING AT THE SAME TIME AS A PROCEEDING BROUGHT IN THE FAMILY COURT PURSUANT TO THIS ARTICLE, THE COURT PRESIDING OVER THE PROCEEDING UNDER THIS ARTICLE MAY JOINTLY HEAR THE DISPOSITIONAL HEARING ON THE CHILD PROTECTIVE PETITION UNDER THIS ARTICLE AND THE HEARING ON THE CUSTODY AND VISITATION PETITION UNDER ARTICLE SIX OF THIS ACT; PROVIDED HOWEVER, THE COURT MUST DETERMINE THE NON-RESPONDENT PARENT'S CUSTODY AND VISITATION PETITION FILED UNDER ARTICLE SIX OF THIS ACT IN ACCORDANCE WITH THE TERMS OF THAT ARTICLE.

(A-2) CUSTODY AND VISITATION PETITION OF NON-RESPONDENT PARENT UNDER SECTION TWO HUNDRED FORTY OF THE DOMESTIC RELATIONS LAW. WHERE A PROCEEDING BROUGHT IN THE SUPREME COURT INVOLVING THE CUSTODY OF, OR RIGHT TO VISITATION WITH, ANY CHILD OF A MARRIAGE IS PENDING AT THE SAME TIME AS A PROCEEDING BROUGHT IN THE FAMILY COURT PURSUANT TO THIS ARTICLE, THE COURT PRESIDING OVER THE PROCEEDING UNDER THIS ARTICLE MAY JOINTLY HEAR THE DISPOSITIONAL HEARING ON THE CHILD PROTECTIVE PETITION UNDER ARTICLE TEN OF THIS ACT AND, UPON REFERRAL FROM THE SUPREME COURT, THE HEARING TO RESOLVE THE MATTER OF CUSTODY OR VISITATION IN THE PROCEEDING PENDING IN THE SUPREME COURT; PROVIDED HOWEVER, THE COURT MUST DETERMINE THE NON-RESPONDENT PARENT'S CUSTODIAL RIGHTS IN ACCORDANCE WITH THE TERMS OF PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION TWO HUNDRED FORTY OF THE DOMESTIC RELATIONS LAW.

(b) An order made in accordance with the provisions of this section shall set forth the required findings as described in subdivision (a) of this section WHERE APPLICABLE, including, if the guardian and the local department of social services 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, that a 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 occurred, and the compelling reasons that 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 for the child, and shall constitute the final disposition of the child protective proceeding. Notwithstanding any other provision of law, the court shall not issue an order of supervision nor may the court require the local department of social services to provide services to the respondent or respondents when granting

custody or guardianship pursuant to article six of this act under this section or granting guardianship under article seventeen of the surrogate's court procedure act.

S 10. Section 1057 of the family court act, as amended by chapter 41 of the laws of 2010, is amended to read as follows:

S 1057. [Supervision] RELEASE OF THE CHILD TO THE RESPONDENT OR RESPONDENTS; SUPERVISION OF THE RESPONDENT OR RESPONDENTS.

(A) The court may RELEASE THE CHILD TO THE RESPONDENT OR RESPONDENTS FOR A PERIOD OF UP TO ONE YEAR, WHICH MAY BE EXTENDED PURSUANT TO SUBDIVISION (D) OF THIS SECTION.

(B) IN CONJUNCTION WITH AN ORDER RELEASING A CHILD UNDER THIS SECTION OR AN ORDER UNDER PARAGRAPH (II), (III) OR (IV) OF SUBDIVISION (A) OF SECTION ONE THOUSAND FIFTY-TWO OF THIS PART, THE COURT MAY place the respondent OR RESPONDENTS under supervision of a child protective agency or of a social services official or duly authorized agency. An order of supervision entered under this section shall set forth the terms and conditions of such supervision that the respondent OR RESPONDENTS must meet and the actions that the child protective agency, social services official or duly authorized agency must take to exercise such supervision.

(C) Except as provided for herein, in any order issued pursuant to SUBDIVISION (A) OR (B) OF 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] AND NO LATER THAN SIXTY DAYS PRIOR TO THE EXPIRATION OF the ORDER, UNLESS THE court determines that the facts and circumstances of the case do not require such report to be made. [Rules] UNIFORM STATEWIDE RULES of court shall define permissible terms and conditions of supervision OF THE RESPONDENT OR RESPONDENTS under this section.

(D) The duration of any period of RELEASE OF THE CHILD TO THE RESPONDENT OR RESPONDENTS OR supervision OF THE RESPONDENT OR RESPONDENTS OR BOTH shall be for an initial period of no more than one year [and the]. THE court may at the expiration of that period, upon a hearing and for good cause shown, [make successive extensions of] EXTEND such RELEASE OR supervision OR BOTH FOR A PERIOD of up to one year [each].

S 11. The section heading and subdivisions (a), (b) and (c) of section 1089-a of the family court act, as amended by section 8 of part F of chapter 58 of the laws of 2010, are amended and two new subdivisions (a-1) and (a-2) are added to read as follows:

Custody or guardianship with A PARENT OR PARENTS, A RELATIVE OR relatives or A suitable PERSON OR persons pursuant to article six of this act or guardianship OF A RELATIVE OR RELATIVES OR A SUITABLE PERSON OR PERSONS pursuant to article seventeen of the surrogate's court procedure act. (a) Where the permanency plan is placement with a fit and willing relative OR A RESPONDENT PARENT, the court may issue an order of custody or guardianship in response to a petition filed by a RESPONDENT PARENT, relative or suitable person seeking custody or guardianship of the child under article six of this act or an order of guardianship of the child under article seventeen of the surrogate's court procedure act [at]. A PETITION FOR CUSTODY OR GUARDIANSHIP MAY BE HEARD JOINTLY WITH a permanency hearing held pursuant to this article [and terminate]. AN ORDER OF CUSTODY OR GUARDIANSHIP ISSUED IN ACCORDANCE WITH THIS SUBDIVISION WILL RESULT IN TERMINATION OF all pending orders issued pursuant to THIS

article OR ARTICLE ten of this act if THE FOLLOWING CONDITIONS HAVE BEEN MET:

(i) the court finds that granting custody TO THE RESPONDENT PARENT OR PARENTS, RELATIVE OR RELATIVES OR SUITABLE PERSON OR PERSONS or guardianship of the child to the relative OR RELATIVES or suitable person OR PERSONS is in the best interests of the child and that the termination of the order placing the child pursuant to article ten of this act will not jeopardize the safety of the child. 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 local department of social services 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 a fact-finding hearing pursuant to section one thousand fifty-one of this chapter has 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

(ii) the court finds that granting custody TO THE RESPONDENT PARENT OR PARENTS, RELATIVE OR RELATIVES OR SUITABLE PERSON OR PERSONS or guardianship of the child to the relative or RELATIVES OR suitable person OR PERSONS will provide the child with a safe and permanent home; and

(iii) the parents, the attorney for the child, the local department of social services, and the foster parent of the child who has been the foster parent for the child for one year or more consent to the issuance of an order of custody or guardianship under article six of this act or the granting of guardianship under article seventeen of the surrogate's court procedure act and the termination of the order of placement pursuant to THIS article OR ARTICLE ten of this act; or [(iv)], IF ANY OF THE PARTIES OBJECT TO THE GRANTING OF CUSTODY OR GUARDIANSHIP, THE COURT HAS MADE THE FOLLOWING FINDINGS after a [consolidated] JOINT hearing on the permanency of the child and the petition under article six of this act or article seventeen of the surrogate's court procedure act[;]:

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

(B) if A RELATIVE OR RELATIVES OR SUITABLE PERSON OR PERSONS HAVE FILED A PETITION FOR CUSTODY OR GUARDIANSHIP AND the local department of social services, the attorney for the child, or the foster parent of the child who has been the foster parent for the child for one year or more [fail to consent] OBJECTS 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 act] THE PETITION, the court finds that granting custody or guardianship of the child to

the relative OR RELATIVES or suitable person OR PERSONS is in the best interests of the child; OR

(C) IF A RESPONDENT PARENT HAS FILED A PETITION FOR CUSTODY UNDER ARTICLE SIX OF THIS ACT AND A PARTY WHO IS NOT A PARENT OF THE CHILD OBJECTS TO THE GRANTING OF THE PETITION, THE COURT FINDS EITHER THAT THE OBJECTING PARTY HAS FAILED TO ESTABLISH EXTRAORDINARY CIRCUMSTANCES, OR, IF THE OBJECTING PARTY HAS ESTABLISHED EXTRAORDINARY CIRCUMSTANCES, THAT GRANTING CUSTODY TO THE PETITIONING RESPONDENT PARENT WOULD NONETHELESS BE IN THE CHILD'S BEST INTERESTS; OR

(D) IF A RESPONDENT PARENT HAS FILED A PETITION FOR CUSTODY UNDER ARTICLE SIX OF THIS ACT AND THE OTHER PARENT FAILS TO CONSENT TO THE GRANTING OF THE PETITION, THE COURT FINDS THAT GRANTING CUSTODY TO THE PETITIONING RESPONDENT PARENT IS IN THE CHILD'S BEST INTERESTS.

(A-1) CUSTODY AND VISITATION PETITION OF NON-RESPONDENT PARENT UNDER ARTICLE SIX OF THIS ACT. WHERE A PROCEEDING FILED BY A NON-RESPONDENT PARENT PURSUANT TO ARTICLE SIX OF THIS ACT IS PENDING AT THE SAME TIME AS A PROCEEDING BROUGHT IN THE FAMILY COURT PURSUANT TO THIS ARTICLE, THE COURT PRESIDING OVER THE PROCEEDING UNDER THIS ARTICLE MAY JOINTLY HEAR THE PERMANENCY HEARING AND THE HEARING ON THE CUSTODY AND VISITATION PETITION UNDER ARTICLE SIX OF THIS ACT; PROVIDED HOWEVER, THE COURT MUST DETERMINE THE NON-RESPONDENT PARENT'S CUSTODY PETITION FILED UNDER ARTICLE SIX OF THIS ACT IN ACCORDANCE WITH THE TERMS OF THAT ARTICLE.

(A-2) CUSTODY AND VISITATION PETITION OF NON-RESPONDENT PARENT UNDER SECTION TWO HUNDRED FORTY OF THE DOMESTIC RELATIONS LAW. WHERE A PROCEEDING BROUGHT IN THE SUPREME COURT INVOLVING THE CUSTODY OF, OR RIGHT TO VISITATION WITH, ANY CHILD OF A MARRIAGE IS PENDING AT THE SAME TIME AS A PROCEEDING BROUGHT IN THE FAMILY COURT PURSUANT TO THIS ARTICLE, THE COURT PRESIDING OVER THE PROCEEDING UNDER THIS ARTICLE MAY JOINTLY HEAR THE PERMANENCY HEARING AND, UPON REFERRAL FROM THE SUPREME COURT, THE HEARING TO RESOLVE THE MATTER OF CUSTODY OR VISITATION IN THE PROCEEDING PENDING IN THE SUPREME COURT; PROVIDED HOWEVER, THE COURT MUST DETERMINE THE NON-RESPONDENT PARENT'S CUSTODIAL RIGHTS IN ACCORDANCE WITH THE TERMS OF PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION TWO HUNDRED FORTY OF THE DOMESTIC RELATIONS LAW.

(b) An order made in accordance with the provisions of this section shall set forth the required findings as described in subdivision (a) of this section, WHERE APPLICABLE, including, if the guardian and local department of social services 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, that a fact-finding hearing pursuant to section one thousand fifty-one of this chapter AND A PERMANENCY HEARING PURSUANT TO SECTION ONE THOUSAND EIGHTY-NINE OF THIS PART has occurred, and the compelling reasons that exist for determining that the return home of the child are not in the best interests of the child and are, therefore, not appropriate permanency options for the child, and shall result in the termination of any orders in effect pursuant to article ten of this act or pursuant to this article. Notwithstanding any other provision of law, the court shall not issue an order of supervision nor may the court require the local department of social services to provide services to the respondent or respondents when granting custody or guardianship pursuant to article six of this act UNDER THIS SECTION or the granting of guardianship under article seventeen of the surrogate's court procedure act in accordance with this section.

(c) As part of the order granting custody or guardianship [to the relative or suitable person] IN ACCORDANCE WITH THIS SECTION pursuant to

article six of this act or the granting of guardianship under article seventeen of the surrogate's court procedure act, the court may require that the local department of social services and the attorney for the child receive notice of, and be made parties to, any subsequent proceeding to modify the order of custody or guardianship granted pursuant to the article six proceeding; provided, however, if the guardian and the local department of social services 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, the order must require that the local department of social services and the attorney for the child receive notice of, and be made parties to, any such subsequent proceeding involving custody or guardianship of the child.

S 12. Paragraph (a) of subdivision 1 of section 240 of the domestic relations law, as amended by chapter 476 of the laws of 2009, is amended to read as follows:

(a) In any action or proceeding brought (1) to annul a marriage or to declare the nullity of a void marriage, or (2) for a separation, or (3) for a divorce, or (4) to obtain, by a writ of habeas corpus or by petition and order to show cause, the custody of or right to visitation with any child of a marriage, the court shall require verification of the status of any child of the marriage with respect to such child's custody and support, including any prior orders, and shall enter orders for custody and support as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties and to the best interests of the child and subject to the provisions of subdivision one-c of this section. Where either party to an action concerning custody of or a right to visitation with a child alleges in a sworn petition or complaint or sworn answer, cross-petition, counterclaim or other sworn responsive pleading that the other party has committed an act of domestic violence against the party making the allegation or a family or household member of either party, as such family or household member is defined in article eight of the family court act, and such allegations are proven by a preponderance of the evidence, the court must consider the effect of such domestic violence upon the best interests of the child, together with such other facts and circumstances as the court deems relevant in making a direction pursuant to this section and state on the record how such findings, facts and circumstances factored into the direction. If a parent makes a good faith allegation based on a reasonable belief supported by facts that the child is the victim of child abuse, child neglect, or the effects of domestic violence, and if that parent acts lawfully and in good faith in response to that reasonable belief to protect the child or seek treatment for the child, then that parent shall not be deprived of custody, visitation or contact with the child, or restricted in custody, visitation or contact, based solely on that belief or the reasonable actions taken based on that belief. If an allegation that a child is abused is supported by a preponderance of the evidence, then the court shall consider such evidence of abuse in determining the visitation arrangement that is in the best interest of the child, and the court shall not place a child in the custody of a parent who presents a substantial risk of harm to that child, and shall state on the record how such findings were factored into the determination. WHERE A PROCEEDING FILED PURSUANT TO ARTICLE TEN OR TEN-A OF THE FAMILY COURT ACT IS PENDING AT THE SAME TIME AS A PROCEEDING BROUGHT IN THE SUPREME COURT INVOLVING THE CUSTODY OF, OR RIGHT TO VISITATION WITH, ANY CHILD OF A MARRIAGE, THE COURT

PRESIDING OVER THE PROCEEDING UNDER ARTICLE TEN OR TEN-A OF THE FAMILY COURT ACT MAY JOINTLY HEAR THE DISPOSITIONAL HEARING ON THE PETITION UNDER ARTICLE TEN OR THE PERMANENCY HEARING UNDER ARTICLE TEN-A OF THE FAMILY COURT ACT AND, UPON REFERRAL FROM THE SUPREME COURT, THE HEARING TO RESOLVE THE MATTER OF CUSTODY OR VISITATION IN THE PROCEEDING PENDING IN THE SUPREME COURT; PROVIDED HOWEVER, THE COURT MUST DETERMINE CUSTODY OR VISITATION IN ACCORDANCE WITH THE TERMS OF THIS SECTION.

An order directing the payment of child support shall contain the social security numbers of the named parties. In all cases there shall be no prima facie right to the custody of the child in either parent. Such direction shall make provision for child support out of the property of either or both parents. The court shall make its award for child support pursuant to subdivision one-b of this section. Such direction may provide for reasonable visitation rights to the maternal and/or paternal grandparents of any child of the parties. Such direction as it applies to rights of visitation with a child remanded or placed in the care of a person, official, agency or institution pursuant to article ten of the family court act, or pursuant to an instrument approved under section three hundred fifty-eight-a of the social services law, shall be enforceable pursuant to part eight of article ten of the family court act and sections three hundred fifty-eight-a and three hundred eighty-four-a of the social services law and other applicable provisions of law against any person having care and custody, or temporary care and custody, of the child. Notwithstanding any other provision of law, any written application or motion to the court for the establishment, modification or enforcement of a child support obligation for persons not in receipt of public assistance and care must contain either a request for child support enforcement services which would authorize the collection of the support obligation by the immediate issuance of an income execution for support enforcement as provided for by this chapter, completed in the manner specified in section one hundred eleven-g of the social services law; or a statement that the applicant has applied for or is in receipt of such services; or a statement that the applicant knows of the availability of such services, has declined them at this time and where support enforcement services pursuant to section one hundred eleven-g of the social services law have been declined that the applicant understands that an income deduction order may be issued pursuant to subdivision (c) of section fifty-two hundred forty-two of the civil practice law and rules without other child support enforcement services and that payment of an administrative fee may be required. The court shall provide a copy of any such request for child support enforcement services to the support collection unit of the appropriate social services district any time it directs payments to be made to such support collection unit. Additionally, the copy of any such request shall be accompanied by the name, address and social security number of the parties; the date and place of the parties' marriage; the name and date of birth of the child or children; and the name and address of the employers and income payors of the party from whom child support is sought or from the party ordered to pay child support to the other party. Such direction may require the payment of a sum or sums of money either directly to the custodial parent or to third persons for goods or services furnished for such child, or for both payments to the custodial parent and to such third persons; provided, however, that unless the party seeking or receiving child support has applied for or is receiving such services, the court shall not direct such payments to be made to the support collection unit, as established in section one hundred

eleven-h of the social services law. Every order directing the payment of support shall require that if either parent currently, or at any time in the future, has health insurance benefits available that may be extended or obtained to cover the child, such parent is required to exercise the option of additional coverage in favor of such child and execute and deliver to such person any forms, notices, documents or instruments necessary to assure timely payment of any health insurance claims for such child.

S 13. This act shall take effect on the one hundred eightieth day after it shall have become a law.