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

6815

I N S E N A T E

March 12, 2014

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

AN ACT to amend the family court act, in relation to reentry of former foster children into foster care; and to repeal certain provisions of such law relating to making technical corrections thereto

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

Section 1. Subdivision 6 of section 355.3 of the family court act, as amended by chapter 663 of the laws of 1985, is amended to read as follows:

6. Successive extensions of placement under this section may be granted, but no placement may be made or continued beyond the respondent's eighteenth birthday without [the child's] HIS OR HER consent and in no event past [the child's] HIS OR HER twenty-first birthday. A RESPONDENT, WHO WAS PREVIOUSLY PLACED OR TRANSFERRED INTO PLACEMENT WITH A LOCAL SOCIAL SERVICES DISTRICT PURSUANT TO THIS SECTION OR SECTION 353.3 OR 355.1 OF THIS ARTICLE AND WHO WAS DISCHARGED FROM FOSTER CARE ON OR AFTER THE DATE ON WHICH THE CHILD ATTAINED THE AGE OF EIGHTEEN DUE TO A FAILURE TO CONSENT TO THE CONTINUATION OF PLACEMENT, MAY MOVE OR, WITH HIS OR HER CONSENT, MAY BE THE SUBJECT OF A MOTION BY A SOCIAL SERVICES OFFICIAL TO REENTER FOSTER CARE IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND NINETY-ONE OF THIS ACT.

S 2. Subdivision (f) of section 756-a of the family court act, as added by chapter 604 of the laws of 1986, is amended to read as follows:

(f) Successive extensions of placement under this section may be granted, but no placement may be made or continued beyond the child's eighteenth birthday without his or her consent and in no event past his or her twenty-first birthday. A CHILD WHO WAS PREVIOUSLY PLACED WITH A LOCAL SOCIAL SERVICES DISTRICT PURSUANT TO SECTION SEVEN HUNDRED FIFTY-SIX OF THIS PART AND WHO WAS DISCHARGED FROM FOSTER CARE ON OR AFTER THE DATE ON WHICH HE OR SHE ATTAINED THE AGE OF EIGHTEEN DUE TO A FAILURE TO CONSENT TO CONTINUATION OF PLACEMENT MAY MOVE OR, WITH HIS OR HER CONSENT, MAY BE THE SUBJECT OF A MOTION BY A SOCIAL SERVICES OFFICIAL TO

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

LBD13786-01-4

REENTER FOSTER CARE IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND NINETY-ONE OF THIS ACT.

S 3. Section 1088 of the family court act, as amended by chapter 605 of the laws of 2011, is amended to read as follows:

S 1088. Continuing court jurisdiction. (A) 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, 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 SIX HUNDRED THIRTY-SEVEN OF THIS ACT OR 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.

(B) 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.

(C) 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], AS DEFINED IN SUBDIVISION (A) OF SECTION ONE THOUSAND NINETY-ONE OF THIS ACT, 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] DISTRICT FROM WHICH THE YOUTH WAS MOST RECENTLY DISCHARGED, OR, IN THE CASE OF A CHILD FREED FOR ADOPTION, THE AUTHORIZED AGENCY INTO WHOSE CUSTODY AND GUARDIANSHIP THE CHILD HAS BEEN PLACED.

S 4. Section 1091 of the family court act, as added by chapter 342 of the laws of 2010, is amended to read as follows:

S 1091. Motion to return to foster care placement. (A) FOR PURPOSES OF THIS ARTICLE, "FORMER FOSTER CARE YOUTH" SHALL MEAN A YOUTH UNDER THE AGE OF TWENTY-ONE WHO WAS DISCHARGED FROM FOSTER CARE ON OR AFTER ATTAINING THE AGE OF EIGHTEEN DUE TO A FAILURE TO CONSENT TO CONTINUATION IN FOSTER CARE AND WHO HAD BEEN: (1) PLACED IN FOSTER CARE WITH A LOCAL SOCIAL SERVICES DISTRICT PURSUANT TO ARTICLE THREE, SEVEN, TEN, TEN-A OR TEN-C OF THIS ACT OR SECTION THREE HUNDRED FIFTY-EIGHT-A OF THE SOCIAL SERVICES LAW; OR (2) FREED FOR ADOPTION IN ACCORDANCE WITH SECTION SIX HUNDRED THIRTY-SEVEN OF THIS ACT OR SECTION THREE HUNDRED EIGHTY-THREE-C, THREE HUNDRED EIGHTY-FOUR OR THREE HUNDRED EIGHTY-FOUR-B OF THE SOCIAL SERVICES LAW BUT HAS NOT YET BEEN ADOPTED; OR (3) THE SUBJECT OF A MOTION TO RESTORE PARENTAL RIGHTS THAT HAS BEEN CONDITIONALLY GRANTED PURSUANT TO PARAGRAPH (III) OF SUBDIVISION (B) OF SECTION SIX HUNDRED THIRTY-SEVEN OF THIS ACT.

(B) A motion to return 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 the custody of the [local commissioner of] social services [or other officer, board or department authorized to receive children as public charges] DISTRICT FROM WHICH

THE YOUTH WAS MOST RECENTLY DISCHARGED, OR, IN THE CASE OF A CHILD FREED FOR ADOPTION, THE SOCIAL SERVICES DISTRICT OR AUTHORIZED AGENCY INTO WHOSE CUSTODY AND GUARDIANSHIP THE CHILD HAS BEEN PLACED, may be made by such former foster care youth, or by a local social services OR, IF APPLICABLE, AN AUTHORIZED AGENCY official upon the consent of such former foster care youth, if there is a compelling reason for such former foster care youth to return to foster care[; provided however, that the].

(C) THE court shall not entertain a motion filed after twenty-four months from the date of the first final discharge that occurred on or after the former foster care youth's eighteenth birthday.

[(a)] (D) A motion made pursuant to this [section] ARTICLE by [a] AN APPROPRIATE LOCAL social services official OR, IN THE CASE OF A CHILD FREED FOR ADOPTION, AN APPROPRIATE LOCAL SOCIAL SERVICES OFFICIAL OR OFFICIAL OF THE AUTHORIZED AGENCY INTO WHOSE CUSTODY AND GUARDIANSHIP THE CHILD HAS BEEN PLACED, shall be made by order to show cause. Such motion shall show by affidavit or other evidence that:

(1) the former foster care youth has no reasonable alternative to foster care;

(2) the former foster care youth consents to enrollment in and attendance at an appropriate educational or vocational program, unless evidence is submitted that such enrollment or attendance is unnecessary or inappropriate, given the particular circumstances of the youth;

(3) re-entry into foster care is in the best interests of the former foster care youth; and

(4) the former foster care youth consents to the re-entry into foster care.

[(b)](E) A motion made pursuant to this [section] ARTICLE by a former foster care youth shall be made by order to show cause [or] ON ten days notice to the social services official OR, IN THE CASE OF A CHILD FREED FOR ADOPTION, THE SOCIAL SERVICES OFFICIAL OR OFFICIAL OF THE AUTHORIZED AGENCY INTO WHOSE CUSTODY AND GUARDIANSHIP THE CHILD HAS BEEN PLACED. Such motion shall show by affidavit or other evidence that:

(1) the requirements outlined in paragraphs one, two and three of subdivision [(a)] (D) of this section are met; and

(2) (I) the [applicable] APPROPRIATE local social services [district] OFFICIAL OR, IF APPLICABLE, OFFICIAL OF THE AUTHORIZED AGENCY consents to the re-entry of such former foster care youth, or [if]

(II) the [applicable] APPROPRIATE local social services [district] OFFICIAL OR, IF APPLICABLE, OFFICIAL OF THE AUTHORIZED AGENCY refuses to consent to the re-entry of such former foster care youth and [that] such refusal is unreasonable.

[(c)](F) (1) If at any time during the pendency of a proceeding brought pursuant to this [section] ARTICLE, the court finds a compelling reason that it is in the best interests of the former foster care youth to be returned immediately to the custody of the APPROPRIATE local commissioner of social services or [other officer, board or department authorized to receive children as public charges], IN THE CASE OF A CHILD FREED FOR ADOPTION, THE APPROPRIATE LOCAL COMMISSIONER OF SOCIAL SERVICES OR AUTHORIZED AGENCY INTO WHOSE CUSTODY AND GUARDIANSHIP THE CHILD HAS BEEN PLACED, pending a final decision on the motion, the court may issue a temporary order returning the youth to the custody of [the] SUCH local commissioner of social services or [other officer, board or department authorized to receive children as public charges], IF APPLICABLE, SUCH AUTHORIZED AGENCY.

(2) Where the APPROPRIATE local social services district OR, IF APPLICABLE, THE AUTHORIZED AGENCY, has refused to consent to the re-entry of a former foster care youth, and where it is alleged pursuant to SUBPARAGRAPH (II) OF paragraph two of subdivision [(b)] (E) of this section, that such refusal [by such social services district] is unreasonable, the court shall grant a motion made pursuant to subdivision [(b)](E) of this section if the court finds and states in writing that the refusal [by the local social services district] is unreasonable. For purposes of this [section] ARTICLE, a court shall find that a refusal [by a local social services district] to allow a former foster care youth to re-enter care is unreasonable if:

(i) the youth has no reasonable alternative to foster care;

(ii) the youth consents to enrollment in and attendance at an appropriate educational or vocational program, unless the court finds a compelling reason that such enrollment or attendance is unnecessary or inappropriate, given the particular circumstances of the youth; and

(iii) re-entry into foster care is in the best interests of the former foster CARE youth.

(3) Upon making a determination on a motion filed pursuant to this [section] ARTICLE, where a motion has previously been granted pursuant to this [section] ARTICLE, in addition to the applicable findings required by this [section] ARTICLE, the court shall grant the motion to return a former foster care youth to the custody of the APPROPRIATE local commissioner of social services or [other officer, board or department authorized to receive children as public charges] IF APPLICABLE, THE AUTHORIZED AGENCY only:

(i) upon a finding that there is a compelling reason for such former foster care youth to return to care;

(ii) if the court has not previously granted a subsequent motion for such former foster care youth to return to care pursuant to this paragraph; and

(iii) upon consideration of the former foster care youth's compliance with previous orders of the court, including the youth's previous participation in an appropriate educational or vocational program, if applicable.

S 5. Subparagraph (E) of paragraph (i) of subdivision (b) of section 1055 of the family court act, as amended by chapter 342 of the laws of 2010, is amended to read as follows:

(E) where the permanency goal is return to the parent and it is anticipated that the child may be finally discharged to his or her parent before the next scheduled permanency hearing, the court may provide the local social services district with authority to finally discharge the child to the parent without further court hearing, provided that ten days prior written notice is served upon the court and the attorney for the child. If the court on its own motion or the attorney for the child on motion to the court does not request the matter to be brought for review before final discharge, no further permanency hearings will be required. The local social services district may also discharge the child on a trial basis to the parent unless the court has prohibited such trial discharge or unless the court has conditioned such trial discharge on another event. For the purposes of this section, trial discharge shall mean that the child is physically returned to the parent while the child remains in the care and custody of the local social services district. Permanency hearings shall continue to be held for any child who has returned to his or her parents on a trial discharge. Where the permanency goal for a youth aging out of foster care is another

planned permanent living arrangement that includes a significant connection to an adult willing to be a permanency resource for the youth, the local social services district may also discharge the youth on a trial basis to the planned permanent living arrangements, unless the court has prohibited or otherwise conditioned such a trial discharge. Trial discharge for a youth aging out of foster care shall mean that a youth is physically discharged but the local social services district retains care and custody or custody and guardianship of the youth and there remains a date certain for the scheduled permanency hearing. Trial discharge for a youth aging out of foster care may be extended at each scheduled permanency hearing, until the child reaches the age of twenty-one, if a child over the age of eighteen consents to such extension. Prior to finally discharging a youth aging out of foster care to another planned permanent living arrangement, the local social services official shall give the youth notice of the right to apply to reenter foster care within the earlier of twenty-four months of the final discharge or the youth's twenty-first birthday in accordance with article ten-B of this act. Such notice shall also advise the youth that reentry into foster care will only be available where the former foster care youth has no reasonable alternative to foster care and consents to enrollment in and attendance at an appropriate educational or vocational program in accordance with paragraph two of subdivision [(a)] (D) of section one thousand ninety-one of this act. Children placed under this section shall be placed until the court completes the initial permanency hearing scheduled pursuant to article ten-A of this act. Should the court determine pursuant to article ten-A of this act that placement shall be extended beyond completion of the scheduled permanency hearing, such extended placement and any such successive extensions of placement shall expire at the completion of the next scheduled permanency hearing, unless the court shall determine, pursuant to article ten-A of this act, to continue to extend such placement.

S 6. Subdivision (e) of section 1055 of the family court act, as amended by chapter 342 of the laws of 2010, is amended to read as follows:

(e) No placement may be made or continued under this section beyond the child's eighteenth birthday without his or her consent and in no event past his or her twenty-first birthday. However, a former foster care youth under the age of twenty-one who was previously discharged from foster care due to a failure to consent to continuation of placement may make a motion pursuant to section one thousand ninety-one of this act 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. In such motion, the youth must consent to enrollment in and attendance at a vocational or educational program in accordance with paragraph two of subdivision [(a)] (D) of section one thousand ninety-one of this act.

S 7. Clause (C) of subparagraph (viii) of paragraph 2 of subdivision (d) of section 1089 of the family court act, as amended by chapter 342 of the laws of 2010, is amended to read as follows:

(C) Where the permanency goal is return to parent and it is anticipated that the child may be returned home before the next scheduled permanency hearing, the court may provide the local social services district with authority to finally discharge the child to the parent without further court hearing, provided that ten days prior written notice is served upon the court and attorney for the child. If the court on its own motion or the attorney for the child on motion to the court

does not request the matter to be brought for review before final discharge, no further permanency hearings will be required. The local social services district may also discharge the child on a trial basis to the parent unless the court has prohibited such trial discharge or unless the court has conditioned such trial discharge on another event. For the purposes of this section, trial discharge shall mean that the child is physically returned to the parent while the child remains in the care and custody of the local social services district. Permanency hearings shall continue to be held for any child who has returned to his or her parents on a trial discharge. Where the permanency goal for a youth aging out of foster care is another planned permanent living arrangement that includes a significant connection to an adult willing to be a permanency resource for the youth, the local social services district may also discharge the youth on a trial basis to the planned permanent living arrangements, unless the court has prohibited or otherwise conditioned such a trial discharge. Trial discharge for a youth aging out of foster care shall mean that the youth is physically discharged but the local social services district retains care and custody or custody and guardianship of the child and there remains a date certain for the scheduled permanency hearing. Trial discharge for a youth aging out of foster care may be extended at each scheduled permanency hearing, until the youth reaches the age of twenty-one, if a youth over the age of eighteen consents to such extension. Prior to finally discharging a youth aging out of foster care to another planned permanent living arrangement, the local social services official shall give the youth notice of the right to apply to reenter foster care within the earlier of twenty-four months of the final discharge or the youth's twenty-first birthday in accordance with article ten-B of this act. Such notice shall also advise the youth that reentry into foster care will only be available where the former foster care youth has no reasonable alternative to foster care and consents to enrollment in and attendance at an appropriate educational or vocational program in accordance with paragraph two of subdivision [(a)] (D) of section one thousand ninety-one of this act.

S 8. Subparagraph (E) of paragraph (i) of subdivision (b) of section 1055 of the family court act, as amended by chapter 41 of the laws of 2010, is REPEALED.

S 9. Clause (C) of subparagraph (viii) of paragraph 2 of subdivision (d) of section 1089 of the family court act, as amended by chapter 41 of the laws of 2010, is REPEALED.

S 10. This act shall take effect immediately.

REPEAL NOTE: The amendments made to subparagraph (E) of paragraph (i) of subdivision (b) of section 1055 and to clause (C) of subparagraph (viii) of paragraph 2 of subdivision (d) of section 1089 of the family court act by sections 67 and 80, respectively, by chapter 41 of the laws of 2010 substitute "child's attorney" for "law guardian" but do not contain the amendments contained in chapter 342 of the laws of 2010. Chapter 342 of the laws of 2010 uses the equivalent phrase "attorney for the child."