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

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Cal. No. 450

2013-2014 Regular Sessions

I N A S S E M B L Y

January 22, 2013

Introduced by M. of A. CLARK, SCARBOROUGH, ROBINSON, CAMARA -- Multi-Sponsored by -- M. of A. ARROYO, HEASTIE, PAULIN, PERRY -- read once and referred to the Committee on Children and Families -- recommitted to the Committee on Children and Families in accordance with Assembly Rule 3, sec. 2 -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the social services law, in relation to the out-of-home placement of certain children with disabilities or disorders

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

Section 1. Subdivision 3 of section 358-a of the social services law is amended by adding a new paragraph (g) to read as follows:

(G) THE COURT MAY APPROVE A PETITION BY OR AGREEMENT WITH A SOCIAL SERVICES OFFICIAL FOR THE TRANSFER FOR TEMPORARY PLACEMENT AND CARE BASED ON CHILD SERVICE NEEDS FOR THE PROVISION OF NECESSARY SERVICES FOR THE CHILD'S EMOTIONAL, BEHAVIORAL OR MENTAL DISORDER, OR MENTAL OR PHYSICAL DISABILITY, WITHOUT THE TRANSFER OF CUSTODY, WHICH PROVIDES THAT THE SOCIAL SERVICES OFFICIAL SHALL MAINTAIN RESPONSIBILITY FOR THE TEMPORARY PLACEMENT AND CARE OF THE CHILD. THE SOCIAL SERVICES DISTRICT SHALL BE ASSIGNED OVERALL RESPONSIBILITY FOR TEMPORARY PLACEMENT AND CARE OF THE CHILD, INCLUDING, BUT NOT LIMITED TO, EITHER THE ACTUAL OR ACTIVE SUPERVISION OF THE DEVELOPMENT OF AN INDIVIDUAL CASE PLAN FOR THE CHILD, PERIODIC REVIEW OF THE CASE PLAN AND REVIEW OF THE APPROPRIATENESS AND SUITABILITY OF THE PLAN AND PLACEMENT, AND ENSURING THAT PROPER CARE AND SERVICES ARE PROVIDED TO FACILITATE RETURN TO THE CHILD'S HOME OR OTHER ALTERNATIVE PERMANENT PLACEMENT, ALL IN ADHERENCE WITH STATE AND FEDERAL RULES, REGULATIONS AND POLICY INTERPRETATIONS.

S 2. Subdivision 2 of section 384-a of the social services law is amended by adding a new paragraph (i) to read as follows:

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

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(I) A SOCIAL SERVICES OFFICIAL MAY ACCEPT A TRANSFER FOR TEMPORARY PLACEMENT AND CARE OF A CHILD FOR THE PROVISION OF NECESSARY SERVICES FOR THE CHILD'S EMOTIONAL, BEHAVIORAL OR MENTAL DISORDER, OR MENTAL OR PHYSICAL DISABILITY, WITHOUT THE TRANSFER OF CUSTODY, PROVIDED THAT THE SOCIAL SERVICES OFFICIAL SHALL MAINTAIN RESPONSIBILITY FOR THE TEMPORARY PLACEMENT AND CARE OF THE CHILD. THE SOCIAL SERVICES OFFICIAL SHALL BE ASSIGNED OVERALL RESPONSIBILITY FOR THE TEMPORARY PLACEMENT AND CARE OF THE CHILD, INCLUDING BUT NOT LIMITED TO, EITHER ACTUAL OR ACTIVE SUPERVISION OF THE DEVELOPMENT OF AN INDIVIDUAL CASE PLAN FOR THE CHILD, PERIODIC REVIEW OF THE CASE PLAN AND REVIEW OF THE APPROPRIATENESS AND SUITABILITY OF THE PLAN AND PLACEMENT, AND ENSURING THAT PROPER CARE AND SERVICES ARE PROVIDED TO FACILITATE RETURN TO THE CHILD'S HOME OR OTHER ALTERNATIVE PERMANENT PLACEMENT, ALL IN ADHERENCE WITH STATE AND FEDERAL RULES, REGULATIONS AND POLICY INTERPRETATIONS.

S 3. Section 358-a of the social services law, as amended by chapter 78 of the laws of 1978, subdivision 1 and paragraph (e) of subdivision 3 as amended, and paragraphs (b), (c) and (d) of subdivision 3 as added by chapter 7 of the laws of 1999, paragraph (b) of subdivision 1 as amended by section 16 of part C of chapter 83 of the laws of 2002, subdivisions 2 and 3 as amended by chapter 808 of the laws of 1985, paragraph (a) of subdivision 2 as amended by chapter 671 of the laws of 2005, paragraph (b) of subdivision 2 as amended by chapter 87 of the laws of 1993, subdivision 2-a as amended by section 35, paragraph (a) and the closing paragraph of paragraph (b) of subdivision 3 as amended by section 36, paragraph (f) of subdivision 3 as amended by section 37, and subdivisions 7 and 8 as amended by section 39 of part A of chapter 3 of the laws of 2005, paragraph (b) of subdivision 2-a and subdivision 12 as amended by chapter 437 of the laws of 2006, subdivision 4 as amended by chapter 823 of the laws of 1987, subdivisions 5 and 9 as amended by chapter 465 of the laws of 1992, subdivision 6 and paragraphs (b) and (c) of subdivision 10 as amended by chapter 41 of the laws of 2010, subdivision 10 as amended by chapter 457 of the laws of 1988, and subdivision 11 as added by chapter 854 of the laws of 1990, is amended to read as follows:

S 358-a. Dependent children in foster care. (1) Initiation of judicial proceeding. (a) A social services official who accepts or proposes to accept the custody and guardianship of a child by means of an instrument executed pursuant to the provisions of section three hundred eighty-four of this chapter, or the TRANSFER FOR TEMPORARY PLACEMENT AND CARE OR care and custody of a child as a public charge by means of an instrument executed pursuant to the provisions of section three hundred eighty-four-a of this chapter, shall determine whether such child is likely to remain in the care of such official for a period in excess of thirty consecutive days. If such official determines that the child is likely to remain in care for a period in excess of thirty consecutive days, such official shall petition the family court judge of the county or city in which the social services official has his or her office, to approve such instrument upon a determination that the placement of the child is in the best interest of the child, that it would be contrary to the welfare of the child to continue in his or her own home and, that where appropriate, reasonable efforts were made prior to the placement of the child into foster care to prevent or eliminate the need for removal of the child from his or her home and that prior to the initiation of the court proceeding required to be held by this subdivision, reasonable efforts were made to make it possible for the child to return safely home. In the case of a child [whose] WHO HAS EITHER BEEN TRANS-

FERRED FOR TEMPORARY PLACEMENT AND CARE OR FOR care and custody [have] AND HAS been transferred to a social services official by means of an instrument executed pursuant to the provisions of section three hundred eighty-four-a of this chapter, approval of the instrument shall only be made upon an additional determination that all of the requirements of such section have been satisfied.

(b) The social services official shall initiate the proceeding by filing the petition as soon as practicable, but in no event later than thirty days following removal of the child from the home provided, however, that the court shall receive, hear and determine petitions filed later than thirty days following removal of the child from his or her home, but state reimbursement shall not be available to the social services district for care and maintenance provided to such child. The social services official shall diligently pursue such proceeding. Where the care and custody OR TEMPORARY PLACEMENT AND CARE of a child as a public charge has been transferred to a social services official by means of an instrument executed pursuant to the provisions of section three hundred eighty-four-a of this chapter for a period of thirty days or less for an indeterminate period which such official deems unlikely to exceed thirty days, and thereafter such official determines that such child will remain in his or her care and custody for a period in excess of thirty days, such official shall, as soon as practicable but in no event later than thirty days following such determination, execute with the child's parent, parents or guardian a new instrument pursuant to the provision of section three hundred eighty-four or three hundred eighty-four-a of this chapter and shall file a petition in family court, pursuant to this section, for approval of such instrument. In such cases involving a social services official, expenditures for the care and maintenance of such child from the date of the initial transfer [of his] FOR EITHER TEMPORARY PLACEMENT AND CARE OR care and custody to the social services official shall be subject to state reimbursement.

(2) Contents of petition. (a) Any petition required or authorized pursuant to subdivision one of this section shall allege whether the parent, parents or guardian executed the instrument because the parent, parents or guardian would be unable to make adequate provision for the care, maintenance and supervision of such child in his or their own home, and shall include facts supporting the petition. [The] IF THE CARE AND CUSTODY OF THE CHILD HAS BEEN TRANSFERRED THE petition shall contain a notice in conspicuous print providing that if the child remains in foster care for fifteen of the most recent twenty-two months, the agency may be required by law to file a petition to terminate parental rights. IF THE TEMPORARY PLACEMENT AND CARE OF THE CHILD HAS BEEN TRANSFERRED, THE PETITION SHALL CONTAIN A NOTICE IN CONSPICUOUS PRINT PROVIDING THAT IF THE PARENT FAILS TO COMPLY WITH THE REQUIREMENTS SET FORTH IN SUBPARAGRAPH (V) OF PARAGRAPH (C) OF SUBDIVISION TWO OF SECTION THREE HUNDRED EIGHTY-FOUR-A OF THIS ARTICLE, THE AGENCY SHALL BE REQUIRED TO FILE A PETITION FOR THE TRANSFER OF CARE AND CUSTODY OF THE CHILD TO AN AUTHORIZED AGENCY. The petition shall also set forth the names and last known addresses of all persons required to be given notice of the proceeding, pursuant to this section and section three hundred eighty-four-c of this chapter, and there shall be shown by the petition or by affidavit or other proof satisfactory to the court that there are no persons other than those set forth in the petition who are entitled to notice pursuant to the provisions of this section or of section three hundred eighty-four-c of this chapter. The petition shall also set forth the efforts which were made, prior to the placement of

the child into foster care, to prevent or eliminate the need for removal of the child from his or her home and the efforts which were made prior to the filing of the petition to make it possible for the child to return safely home. If such efforts were not made, the petition shall set forth the reasons why these efforts were not made. The petition shall request that, pending any hearing which may be required by the family court judge, a temporary order be made transferring THE TEMPORARY PLACEMENT AND CARE OR the care and custody of the child to the social services official in accordance with the provisions of subdivision three of this section. In the case of a child [whose] WHO HAS EITHER BEEN TRANSFERRED FOR TEMPORARY PLACEMENT AND CARE OR FOR care and custody [have been transferred] to a social services official by means of an instrument executed pursuant to section three hundred eighty-four-a of this chapter, the petition shall also allege and there shall be shown by affidavit or other proof satisfactory to the court that all the requirements of such section have been satisfied[, including]. IF THE CARE AND CUSTODY OF THE CHILD HAS BEEN TRANSFERRED SUCH REQUIREMENTS SHALL INCLUDE the results of the investigation to locate relatives of the child, including any non-respondent parent and all of the child's grandparents. Such results shall include whether any relative who has been located expressed an interest in becoming a foster parent for the child or in seeking custody or care of the child.

(b) The social services official who initiated the proceeding shall file supplemental information with the clerk of the court not later than ten days prior to the date on which the proceeding is first heard by the court. Such information shall include relevant portions, as determined by the department, of the assessment of the child and his family circumstances performed and maintained, and the family's service plan if available, pursuant to sections four hundred nine-e and four hundred nine-f of this chapter. Copies of such supplemental information need not be served upon those persons entitled to notice of the proceeding and a copy of the petition pursuant to subdivision four of this section.

(2-a) Continuing jurisdiction. (a) The court shall possess continuing jurisdiction over the parties until the child is discharged from placement and all orders regarding supervision, protection or services have expired.

(b) The court, upon approving an instrument under this section, shall schedule a permanency hearing pursuant to article ten-A of the family court act for a date certain not more than eight months after the placement of the child into foster care. Such date certain shall be included in the order approving the instrument.

(3) Disposition of petition. (a) If the court is satisfied that the parent, parents or guardian executed such instrument knowingly and voluntarily and because he or she would be unable to make adequate provision for the care, maintenance and supervision of such child in his or her home, and that the requirements of section three hundred eighty-four-a of this chapter, if applicable, have been satisfied and that where appropriate, reasonable efforts were made prior to the placement of the child into foster care to prevent or eliminate the need for removal of the child from his or her home and that prior to the initiation of the court proceeding required to be held by subdivision one of this section, reasonable efforts were made to make it possible for the child to return safely to his or her home, the court may find and determine that the best interests and welfare of the child would be promoted by removal of the child from such home, and that it would be contrary to the welfare of such child for the child to continue in such home, and

the court shall thereupon grant the petition and approve such instrument and the transfer of the custody and guardianship or THE TRANSFER FOR TEMPORARY PLACEMENT AND CARE OR care and custody of such child to such social services official in accordance therewith. If the court determines that, where appropriate, reasonable efforts were made prior to the placement of the child into foster care to prevent or eliminate the need for removal of the child from his or her home, that prior to the initiation of the court proceeding reasonable efforts were made to make it possible for the child to return safely to his or her home, or that it would be contrary to the best interests of the child to continue in the home, or that reasonable efforts to prevent or eliminate the need for removal of the child from the home were not made but that the lack of such efforts was appropriate under the circumstances, the court order shall include such findings. Approval of such instrument in a proceeding pursuant to this section shall not constitute a remand or commitment pursuant to this chapter and shall not preclude challenge in any other proceeding to the validity of the instrument. If the permanency plan for the child is adoption, guardianship, permanent placement with a fit and willing relative or another planned permanent living arrangement other than reunification with the parent or parents of the child, the court must consider and determine in its order whether reasonable efforts are being made to make and finalize such alternate permanent placement.

(b) For the purpose of this section, reasonable efforts to prevent or eliminate the need for removing the child from the home of the child or to make it possible for the child to return safely to the home of the child shall not be required where the court determines that:

(1) the parent of such child has subjected the child to aggravated circumstances, as defined in subdivision twelve of this section;

(2) the parent of such child has been convicted of (i) murder in the first degree as defined in section 125.27 or murder in the second degree as defined in section 125.25 of the penal law and the victim was another child of the parent; or (ii) manslaughter in the first degree as defined in section 125.20 or manslaughter in the second degree as defined in section 125.15 of the penal law and the victim was another child of the parent, provided, however, that the parent must have acted voluntarily in committing such crime;

(3) the parent of such child has been convicted of an attempt to commit any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent; or has been convicted of criminal solicitation as defined in article one hundred, conspiracy as defined in article one hundred five or criminal facilitation as defined in article one hundred fifteen of the penal law for conspiring, soliciting or facilitating any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent;

(4) the parent of such child has been convicted of assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10 or aggravated assault upon a person less than eleven years old as defined in section 120.12 of the penal law, and the commission of one of the foregoing crimes resulted in serious physical injury to the child or another child of the parent;

(5) the parent of such child has been convicted in any other jurisdiction of an offense which includes all of the essential elements of any crime specified in subparagraph two, three or four of this paragraph, and the victim of such offense was the child or another child of the parent; or

(6) the parental rights of the parent to a sibling of such child have been involuntarily terminated;

unless the court determines that providing reasonable efforts would be in the best interests of the child, not contrary to the health and safety of the child, and would likely result in the reunification of the parent and the child in the foreseeable future. The court shall state such findings in its order.

If the court determines that reasonable efforts are not required because of one of the grounds set forth above, a permanency hearing shall be held within thirty days of the finding of the court that such efforts are not required. Such hearing shall be conducted pursuant to section one thousand eighty-nine of the family court act. The local social services official shall thereafter make reasonable efforts to place the child in a timely manner and to complete whatever steps are necessary to finalize the permanent placement of the child as set forth in the permanency plan approved by the court. If reasonable efforts are determined by the court not to be required because of one of the grounds set forth in this paragraph, AND THE LOCAL SOCIAL SERVICES OFFICIAL HAS ACCEPTED AN INSTRUMENT FOR THE TRANSFER OF CARE AND CUSTODY OF THE CHILD, the local social services official may file a petition for termination of parental rights of the parent in accordance with section three hundred eighty-four-b of this chapter. IF THE LOCAL SOCIAL SERVICES OFFICIAL HAS ACCEPTED AN INSTRUMENT FOR THE TRANSFER FOR TEMPORARY PLACEMENT AND CARE OF A CHILD, THE LOCAL SOCIAL SERVICES OFFICIAL SHALL FILE A PETITION FOR THE TRANSFER OF CARE AND CUSTODY OF THE CHILD TO AN AUTHORIZED AGENCY.

(c) For the purpose of this section, in determining reasonable efforts to be made with respect to a child, and in making such reasonable efforts, the child's health and safety shall be the paramount concern.

(d) For the purpose of this section, a sibling shall include a half-sibling.

(e) 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 include conditions, where appropriate and specified by the judge, requiring the implementation of a specific plan of action by the social services official to exercise diligent efforts toward the discharge of the child from care, either to his own family or to an adoptive home; provided, however, that such plan shall not include the provision of any service or assistance to the child and his or her family which is not authorized or required to be made available pursuant to the comprehensive annual services program plan then in effect. An order of placement shall include, at the least:

(i) a description of the visitation plan;

(ii) a direction that the respondent or respondents shall be notified of the planning conference or conferences to be held pursuant to subdivision three of section four hundred nine-e of this chapter, of their right to attend the conference, and of their right to have counsel or other representative or companion with them;

A copy of the court's order and the service plan shall be given to the respondent. [The] IF THE CARE AND CUSTODY OF THE CHILD HAS BEEN TRANSFERRED THE order shall also contain a notice that if the child remains in foster care for more than fifteen of the most recent twenty-two months, the agency may be required by law to file a petition to terminate parental rights. IF THE TEMPORARY PLACEMENT AND CARE OF THE CHILD HAS BEEN TRANSFERRED THE ORDER SHALL ALSO CONTAIN A NOTICE THAT IF THE RESPONDENT FAILS TO COMPLY WITH THE REQUIREMENTS SET FORTH IN SUBPARA-

GRAPH (V) OF PARAGRAPH (C) OF SUBDIVISION TWO OF SECTION THREE HUNDRED EIGHTY-FOUR-A OF THIS ARTICLE, THE AGENCY SHALL BE REQUIRED TO FILE A PETITION FOR THE TRANSFER OF CARE AND CUSTODY OF THE CHILD TO AN AUTHORIZED AGENCY.

Nothing in such order shall preclude either party to the instrument from exercising its rights under this section or under any other provision of law relating to the return of the care OR CARE and custody of the child by the social services official to the parent, parents or guardian. Violation of such [on] AN order shall be subject to punishment pursuant to section seven hundred fifty-three of the judiciary law.

(f) For a child who has attained the age of fourteen, if the court grants the petition and approves an instrument executed pursuant to section three hundred eighty-four or three hundred eighty-four-a of this chapter and the transfer of custody and guardianship or TRANSFER FOR TEMPORARY PLACEMENT AND CARE OR care and custody of the child to a local social services official the court shall determine in its order the services and assistance needed to assist the child in learning independent living skills.

(4) Notice. (a) Upon the filing of a petition pursuant to this section, the family court judge shall direct that service of a notice of the proceeding and a copy of the petition shall be made upon such persons and in such manner as the judge may direct. If the instrument executed by the parent, parents or guardian of a child consents to the jurisdiction of the family court over such proceeding, and waives service of the petition and notice of proceeding, then the family court judge may, in his discretion, dispense with service upon the consenting parent, parents or guardian, provided, however, that a waiver of service of process and notice of the proceeding by a parent or guardian who has transferred EITHER TEMPORARY PLACEMENT AND CARE OR the care and custody of a child to an authorized agency, pursuant to section three hundred eighty-four-a of this chapter, shall be null and void and shall not be given effect by the court. Notice to any parent, parents or guardian who has not executed the instrument shall be required.

(b) In the event the family court judge determines that service by publication is necessary and orders service by publication, service shall be made in accordance with the provisions of rule three hundred sixteen of the civil practice law and rules, provided, however, that a single publication of the summons or other process with a notice as specified herein in only one newspaper designated in the order shall be sufficient. In no event shall the whole petition be published. The petition shall be delivered to the person summoned at the first court appearance pursuant to section one hundred fifty-four-a of the family court act. The notice to be published with the summons or other process shall state the date, time, place and purpose of the proceeding.

(i) If the petition is initiated to transfer custody and guardianship of a child by an instrument executed pursuant to the provisions of section three hundred eighty-four of this chapter, the notice to be published shall also state that failure to appear may result, without further notice, in the transfer of custody and guardianship of the child to a social services official in this proceeding.

(ii) If the petition is initiated to transfer care and custody of a child by an instrument executed pursuant to the provisions of section three hundred eighty-four-a of this chapter, the notice to be published shall also state that failure to appear may result, without further notice, in the transfer of care and custody of the child to a social services official in this proceeding.

(5) Hearing and waiver. The instrument may include a consent by the parent, parents or guardian to waiver of any hearing and that a determination may be made by the family court judge based solely upon the petition, and other papers and affidavits, if any, submitted to the family court judge, provided, however, that a waiver of hearing by a parent or guardian who has EITHER transferred TEMPORARY PLACEMENT AND CARE OR the care and custody of a child to an authorized agency, pursuant to section three hundred eighty-four-a of this chapter, shall be effective only if such waiver was executed in an instrument separate from that transferring EITHER TEMPORARY PLACEMENT AND CARE OR the [child's] care and custody OF THE CHILD. In any case where an effective waiver has been executed, the family court judge may dispense with a hearing, approve the instrument and EITHER the transfer of [the] custody and guardianship or THE TRANSFER FOR TEMPORARY PLACEMENT AND CARE OR THE care and custody of the child to the social services official and make the requisite findings and determinations provided for in subdivision three of this section, if it appears to the satisfaction of the family court judge that the allegations in the petition are established sufficiently to warrant the family court judge to grant such petition, to make such findings and determination, and to issue such order.

In any case where a hearing is required, the family court judge, if the holding of an immediate hearing on notice is impractical, may forthwith, upon the basis of the instrument and the allegations of the petition, make a temporary finding that the parent, parents, or guardian of the child are unable to make adequate provision for the care, maintenance and supervision of such child in the child's own home and that the best interest and welfare of the child will be promoted by the removal of such child from such home and thereupon, the family court judge shall make a temporary order transferring EITHER THE TEMPORARY PLACEMENT AND CARE OR the care and custody of such child to the social services official, and shall set the matter down for hearing on the first feasible date.

(6) Representation. In any case where a hearing is directed by the family court judge, he or she shall, pursuant to section two hundred forty-nine of the family court act, appoint an attorney to represent the child, who shall be admitted to practice law in the state of New York.

(7) Return of child. If an instrument provides for the return of the care OR CARE and custody of a child by the local social services official to the parent, parents or guardian upon any terms and conditions or at any time, the local social services official shall comply with such terms of such instrument without further court order. Every order approving an instrument providing for the transfer of the care OR CARE and custody of a child to a local social services official shall be served upon the parent, parents or guardian who executed such instrument in such manner as the family court judge may provide in such order, together with a notice of the terms and conditions under which the care OR CARE and custody of such child may be returned to the parent, parents or guardian. If an instrument provides for the return of the care OR CARE and custody of a child by the local social services official to the parent, parents or guardian without fixing a definite date for such return, or if the local social services official shall fail to return a child to the care OR CARE and custody of the child's parent, parents or guardian in accordance with the terms of the instrument, the parent, parents or guardian may seek such care OR CARE and custody by motion for return of such child and order to show cause in such proceeding or by writ of habeas corpus in the supreme court. Nothing in this subdivision

shall limit the requirement for a permanency hearing pursuant to article ten-A of the family court act.

(8) Appealable orders. Any order of a family court denying any petition of a local social services official filed pursuant to this section, or any order of a family court granting or denying any motion filed by a parent, parents or guardian for return of a child pursuant to this section, shall be deemed an order of disposition appealable pursuant to article eleven of the family court act.

(9) Duty of social services official. In the event that a family court judge denies a petition of a social services official for approval of an instrument, upon a finding that the welfare of the child would not be promoted by foster care, such social services official shall not accept or retain the care OR CARE and custody as a public charge or custody and guardianship of such child, provided, however, that the denial by a family court judge of a petition of a social services official filed pursuant to this section shall not limit or affect the duty of such social services official to take such other action or offer such services as are authorized by law to promote the welfare and best interests of the child.

(10) Visitation rights; non-custodial parents and grandparents. (a) Where a social services official incorporates in an instrument visitation rights set forth in an order, judgment or agreement as described in paragraph (d) of subdivision two of section three hundred eighty-four-a of this chapter, such official shall make inquiry of the state central register of child abuse and maltreatment to determine whether or not the person having such visitation rights is a subject or another person named in an indicated report of child abuse or maltreatment, as such terms are defined in section four hundred twelve of this chapter, and shall further ascertain, to the extent practicable, whether or not such person is a respondent in a proceeding under article ten of the family court act whereby the respondent has been alleged or adjudicated to have abused or neglected such child.

(b) Where a social services official or the attorney for the child opposes incorporation of an order, judgment or agreement conferring visitation rights as provided for in paragraph (e) of subdivision two of section three hundred eighty-four-a of this chapter, the social services official or attorney for the child shall apply for an order determining that the provisions of such order, judgment or agreement should not be incorporated into the instrument executed pursuant to such section. Such order shall be granted upon a finding, based on competent, relevant and material evidence, that the child's life or health would be endangered by incorporation and enforcement of visitation rights as described in such order, judgment or agreement. Otherwise, the court shall deny such application.

(c) Where visitation rights pursuant to an order, judgment or agreement are incorporated in an instrument, the parties may agree to an alternative schedule of visitation equivalent to and consistent with the original or modified visitation order, judgment, or agreement where such alternative schedule reflects changed circumstances of the parties and is consistent with the best interests of the child. In the absence of such an agreement between the parties, the court may, in its discretion, upon application of any party or the child's attorney, order an alternative schedule of visitation, as described herein, where it determines that such schedule is necessary to facilitate visitation and to protect the best interests of the child.

(d) The order providing an alternative schedule of visitation shall remain in effect for the length of the placement of the child as provided for in such instrument unless such order is subsequently modified by the court for good cause shown. Whenever the court makes an order denying or modifying visitation rights pursuant to this subdivision, the instrument described in section three hundred eighty-four-a of this chapter shall be deemed amended accordingly.

(11) Siblings, placement and visitation. (a) In reviewing any petition brought under this section, the court shall inquire if the social services official has arranged for the placement of the child who is the subject of the petition with any minor siblings or half-siblings who are placed in care or, if such children have not been placed together, whether such official has arranged for regular visitation and other forms of regular communication between such child and such siblings.

(b) If the court determines that the subject child has not been placed with his or her minor siblings or half-siblings who are in care, or that regular visitation and other forms of regular communication between the subject child and his or her minor siblings or half-siblings has not been provided or arranged for, the court may direct such official to provide or arrange for such placement or regular visitation and communication where the court finds that such placement or visitation and communication is in the child's best interests. Placement or regular visitation and communication with siblings or half-siblings shall be presumptively in the child's best interests unless such placement or visitation and communication would be contrary to the child's health, safety or welfare, or the lack of geographic proximity precludes or prevents visitation.

(12) For the purposes of this section, aggravated circumstances means where a child has been either severely or repeatedly abused, as defined in subdivision eight of section three hundred eighty-four-b of this chapter; or where a child has subsequently been found to be an abused child, as defined in paragraph (i) or (iii) of subdivision (e) of section one thousand twelve of the family court act, within five years after return home following placement in foster care as a result of being found to be a neglected child, as defined in subdivision (f) of section one thousand twelve of the family court act, provided that the respondent or respondents in each of the foregoing proceedings was the same; or where the court finds by clear and convincing evidence that the parent of a child in foster care has refused and has failed completely, over a period of at least six months from the date of removal, to engage in services necessary to eliminate the risk of abuse or neglect if returned to the parent, and has failed to secure services on his or her own or otherwise adequately prepare for the return home and, after being informed by the court that such an admission could eliminate the requirement that the local department of social services provide reunification services to the parent, the parent has stated in court under oath that he or she intends to continue to refuse such necessary services and is unwilling to secure such services independently or otherwise prepare for the child's return home; provided, however, that if the court finds that adequate justification exists for the failure to engage in or secure such services, including but not limited to a lack of child care, a lack of transportation, and an inability to attend services that conflict with the parent's work schedule, such failure shall not constitute an aggravated circumstance; or where a court has determined a child five days old or younger was abandoned by a parent with an intent to wholly abandon such child and with the intent that the

child be safe from physical injury and cared for in an appropriate manner.

S 4. Paragraph (b) of subdivision 1 of section 358-a of the social services law, as amended by chapter 7 of the laws of 1999, is amended to read as follows:

(b) The social services official shall initiate the proceeding by filing the petition as soon as practicable, but in no event later than thirty days following removal of the child from the home provided, however, that the court shall receive, hear and determine petitions filed later than thirty days following removal of the child from his or her home, but state reimbursement to the social services district for care and maintenance provided to such child shall be denied pursuant to section one hundred fifty-three-d of this chapter. The social services official shall diligently pursue such proceeding. Where the care and custody OR TEMPORARY PLACEMENT AND CARE of a child as a public charge has been transferred to a social services official by means of an instrument executed pursuant to the provisions of section three hundred eighty-four-a of this chapter for a period of thirty days or less for an indeterminate period which such official deems unlikely to exceed thirty days, and thereafter such official determines that such child will remain in his or her care and custody for a period in excess of thirty days, such official shall, as soon as practicable but in no event later than thirty days following such determination, execute with the child's parent, parents or guardian a new instrument pursuant to the provision of section three hundred eighty-four or three hundred eighty-four-a of this chapter and shall file a petition in family court, pursuant to this section, for approval of such instrument. In such cases involving a social services official, expenditures for the care and maintenance of such child from the date of the initial transfer [of his] FOR EITHER TEMPORARY PLACEMENT AND CARE OR care and custody to the social services official shall be subject to state reimbursement[, notwithstanding the provisions of section one hundred fifty-three-d of this chapter].

S 5. Section 384-a of the social services law, as amended by chapter 669 of the laws of 1976, subdivision 1 as amended by section 52, subdivision 1-b as added by section 53 and paragraph (a) and subparagraph (iii) of paragraph (h) of subdivision 2 as amended by section 54 of part A of chapter 3 of the laws of 2005, subdivision 1-a as amended by chapter 671 of the laws of 2005, subdivision 2 as separately amended by chapter 666 of the laws of 1976, paragraph (c) of subdivision 2 as amended by chapter 256 of the laws of 1990, subparagraph (i) of paragraph (c) of subdivision 2 as amended by chapter 69 of the laws of 1991, subparagraph (ix) of paragraph (c) of subdivision 2 as added by chapter 7 of the laws of 1999, paragraphs (d) and (e) as added and paragraph (g) of subdivision 2 as relettered and subdivision 3 as amended by chapter 457 of the laws of 1988, paragraph (f) of subdivision 2 as amended by chapter 41 of the laws of 2010, paragraph (g) of subdivision 2 as added by chapter 947 of the laws of 1981, and paragraph (h) of subdivision 2 as added by chapter 477 of the laws of 2000, is amended to read as follows:

S 384-a. Transfer of [care and custody of] children FOR TEMPORARY PLACEMENT AND CARE OR CARE AND CUSTODY. 1. Method. [The care and custody of a child may be transferred by a parent or guardian, and the care of a child may be transferred by any person to whom a parent has entrusted the care of the child, to an authorized agency by a written instrument in accordance with the provisions of this section.] A PARENT OR GUARDIAN MAY EITHER:

(A) TRANSFER RESPONSIBILITY FOR TEMPORARY PLACEMENT AND CARE OF A CHILD SO THEY MAY RECEIVE NECESSARY SERVICES FOR AN EMOTIONAL, BEHAVIORAL OR MENTAL DISORDER, OR MENTAL OR PHYSICAL DISABILITY TO AN AUTHORIZED AGENCY BY A WRITTEN INSTRUMENT IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION; OR

(B) TRANSFER THE CARE AND CUSTODY OF A CHILD TO AN AUTHORIZED AGENCY BY A WRITTEN INSTRUMENT IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

1-A. THE CARE OF A CHILD MAY ALSO BE TRANSFERRED TO AN AUTHORIZED AGENCY BY ANY PERSON TO WHOM A PARENT HAS ENTRUSTED THE CARE OF THE CHILD. Such transfer by a person who is not the child's parent or guardian shall not affect the rights or obligations of the parents or guardian, and such transfer shall be deemed a transfer of the care and custody of the child for the purposes of section three hundred fifty-eight-a of this chapter.

[1-a.] 1-B. Prior to accepting a transfer of care and custody, a local social services official shall commence a search to locate any non-respondent parent of the child and shall conduct an immediate investigation to (a) locate relatives of the child, including all of the child's grandparents, all suitable relatives identified by either 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 to inform them of the opportunity for becoming foster parents or for seeking custody or care 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; and to determine whether the child may appropriately be placed with a suitable person related to the child and whether such relative seeks approval as a foster parent pursuant to this chapter for the purposes of providing care for such child, or wishes to provide care and custody for the child until the parent or other person responsible for the care of the child is able to resume custody; and (b) identify minor siblings or half-siblings of the child and to determine whether such siblings or half-siblings have been or are being transferred FOR TEMPORARY PLACEMENT AND CARE OR to the care and custody of such official. Such official shall provide or arrange for the provision of care so as to permit the child and his or her minor siblings or half-siblings to be placed together unless, in the judgment of such official, such placement would be contrary to the best interests of the children; whereupon, such official shall provide or arrange for regular visitation and other forms of regular communication between such children unless, in the judgment of such official, such visitation and communication would be contrary to the best interests of such children. Placement or regular visitation and communication with siblings or half-siblings shall be presumptively in the child's best interests unless such placement or visitation and communication would be contrary to the child's health, safety or welfare, or the lack of geographic proximity precludes or prevents visitation.

[1-b.] 1-C. Upon accepting the transfer of care and custody of a child from the parent, guardian or other person to whom care of the child has been entrusted, a local social services official shall obtain information to the extent known from such person regarding the other parent, any person to whom the parent transferring care and custody had been married at the time of the conception or birth of the child and any other person who would be entitled to notice of a proceeding to terminate parental rights pursuant to section three hundred eighty-four-c of this title. Such information shall include, but not be limited to, such

parent's or person's name, last-known address, social security number, employer's address and any other identifying information. Any information provided pursuant to this subdivision shall be recorded in the uniform case record maintained pursuant to section four hundred nine-f of this article; provided, however, that the failure to provide such information shall not invalidate the transfer of care and custody.

2. Terms. (a) The instrument shall be upon such terms, for such time and subject to such conditions as may be agreed upon by the parties thereto. The office of children and family services may promulgate suggested terms and conditions for inclusion in such instruments, but shall not require that any particular terms and conditions be included. If the instrument provides that the child is to be returned by the authorized agency on a date certain or upon the occurrence of an identifiable event, such agency shall return such child at such time unless such action would be contrary to court order entered at any time prior to such date or event or within ten days thereafter pursuant to section three hundred eighty-four-b of this title or article six, ten, or ten-A of the family court act or unless and so long as the parent or guardian is unavailable or incapacitated to receive the child. The parent or guardian may, upon written notice to such agency, request return of the child at any time prior to the identified date or event[, whereupon]. IF THE RESPONSIBILITY OF THE CHILD HAS BEEN TRANSFERRED FOR TEMPORARY PLACEMENT AND CARE, SUCH AGENCY SHALL RETURN THE CHILD. IF THE CARE AND CUSTODY OF THE CHILD HAS BEEN TRANSFERRED such agency may, without court order, return the child or, within ten days after such request, may notify the parent or guardian that such request is denied. If such agency denies or fails to act upon such request, the parent or guardian may seek return of the care and custody of the child by motion in family court for return of such child and order to show cause, or by writ of habeas corpus in the supreme court or family court. If the instrument fails to specify a date or identifiable event upon which such agency shall return such child, such agency shall return the child within twenty days after having received notice that the parent or guardian wishes the child returned, unless such action would be contrary to court order entered at any time prior to the expiration of such twenty day period pursuant to section three hundred eighty-four-b of this title or article six, ten, or ten-A of the family court act. Expenditures by a local social services district for the care and maintenance of a child who has been continued in the care of an authorized agency in violation of the provisions of this subdivision shall not be subject to state reimbursement.

(b) [No] WHEN THE RESPONSIBILITY OF THE CHILD HAS BEEN TRANSFERRED FOR TEMPORARY PLACEMENT AND CARE NO provisions set forth in any such instrument regarding the right of the parent or guardian to visit the child or to have services provided to the child and to the parent or guardian to strengthen the parental relationship may be terminated or limited by the authorized agency [having the care and custody of the child]. WHEN THE CARE AND CUSTODY OF THE CHILD HAS BEEN TRANSFERRED SUCH RIGHTS MAY NOT BE TERMINATED OR LIMITED BY THE AUTHORIZED AGENCY unless: (i) the instrument shall have been amended to so limit or terminate such right, pursuant to subdivision three of this section; or (ii) the right of visitation or to such services would be contrary to or inconsistent with a court order obtained in any proceeding in which the parent or guardian was a party.

(c) The instrument shall state, in lay terms, in conspicuous print of at least eighteen point type:

(i) that the parent or guardian has the right, prior to signing the instrument transferring EITHER THE RESPONSIBILITY OF THE CHILD FOR TEMPORARY PLACEMENT AND CARE OR TRANSFERRING the care and custody of the child to an authorized agency, to legal representation of the parent's own choosing. The agency shall provide the parent or guardian with a list of attorneys or legal services organizations, if any, which provide free legal services to persons unable to otherwise obtain such services;

(ii) that the parent or guardian MAY EITHER TRANSFER THE CARE AND CUSTODY OF THE CHILD, OR TRANSFER THE RESPONSIBILITY OF THE CHILD FOR TEMPORARY PLACEMENT AND CARE BUT has no legal obligation to transfer the [care and custody of the] child to such official, and will incur no legal sanction for failing to do so;

(iii) that the law permits the instrument to specify a date certain or an identifiable event upon which the child is to be returned, and if no date or event is specified, that the parent or guardian has a right to the return of the child within twenty days of a request for return, unless otherwise ordered by the court; and to otherwise have the child returned in accordance with the terms of the instrument and the provisions of this section;

(iv) that the parent or guardian has a right to supportive services, which shall include preventive and other supportive services authorized to be provided pursuant to the state's consolidated services plan, to visit the child, and to determine jointly with the agency the terms and frequency of visitation;

(v) that the parent or guardian, subject to the terms of the instrument, has an obligation

(A) to visit the child,

(B) to plan for the future of the child,

(C) to meet with and consult with the agency about such plan,

(D) to contribute to the support of the child to the extent of his or her financial ability to do so, and

(E) to inform the agency of any change of name and address;

(vi) [that] IF THE CARE AND CUSTODY OF THE CHILD HAS BEEN TRANSFERRED the failure of the parent or guardian to meet the obligations listed in subparagraph (v) OF THIS PARAGRAPH could be the basis for a court proceeding for the commitment of the guardianship and custody of the child to an authorized agency thereby terminating parental rights;

(vii) IF THE RESPONSIBILITY OF THE CHILD HAS BEEN TRANSFERRED FOR TEMPORARY PLACEMENT AND CARE THE FAILURE OF THE PARENT OR GUARDIAN TO MEET THE OBLIGATIONS LISTED IN SUBPARAGRAPH (V) OF THIS PARAGRAPH MAY BE THE BASIS FOR A PETITION TO THE COURT FOR TRANSFER OF CARE AND CUSTODY OF THE CHILD TO AN AUTHORIZED AGENCY;

(VIII) that the parent or guardian has a right to a fair hearing pursuant to section twenty-two of this chapter concerning the agency's failure to permit the parent or guardian to visit the child or to provide supportive services, which shall include preventive and other supportive services authorized to be provided pursuant to the state's consolidated services plan, to the child and to the parent or guardian;

[(viii)] (IX) the amount of money which the parent will periodically contribute to the support of the child and the schedule for such payments, if known.

[(ix) that if] (X) IF THE CARE AND CUSTODY OF THE CHILD HAS BEEN TRANSFERRED AND the child remains in foster care for fifteen of the most recent twenty-two months, the agency may be required by law to file a petition to terminate parental rights.

(d) In any case where a parent who has transferred EITHER THE RESPONSIBILITY OF A CHILD FOR TEMPORARY PLACEMENT AND CARE OR TRANSFERRED care and custody of a child to a social services official pursuant to this section informs the social services official that an order or judgment conferring visitation rights relating to the child has been entered by the family court or supreme court or that a written agreement as described in section two hundred thirty-six of the domestic relations law between the parents confers such rights, any instrument executed pursuant to this section shall incorporate the provisions of such order, judgment or agreement to the extent that visitation rights are affected and shall provide for visitation or other rights as required by such order, judgment or agreement. Such incorporation shall not preclude a social services official from exercising his authority pursuant to paragraph (e) or (f) of this subdivision.

(e) Where a social services official opposes incorporation of an order, judgment or agreement described in paragraph (d) of this subdivision, such official may, upon execution of the instrument described in this section and upon notice to the non-custodial parent or grandparent named in such order, judgment or agreement, be heard thereon in a proceeding pursuant to section three hundred fifty-eight-a of this chapter.

(f) Nothing in this section shall be deemed to prohibit a social services official or an attorney for the child, if any, from making an application to modify the terms of a visitation order, incorporated pursuant to this section, for good cause shown, upon notice to all interested parties, or to limit the right of a non-custodial parent or grandparent to seek visitation pursuant to applicable provisions of law.

(g) In the event a child whose care and custody is transferred pursuant to this section is admitted to a hospital operated or licensed by the office of mental health and cannot be returned to the physical custody of his or her parent or guardian upon request because, pursuant to section four hundred of this chapter, the medical director of the facility has not authorized the removal of the child, the child shall nonetheless be deemed to have been returned to the legal care and custody of his or her parent or guardian. Expenditures by a social services district for the care and maintenance of such a child shall be subject to state reimbursement notwithstanding the provisions of section one hundred fifty-three-b of this chapter.

(h) (i) Where a local social services official determines that a child is at significant risk of placement in the care and custody of the local commissioner of social services during the eighteen months immediately following review by such official because the custodial parent or legal guardian of such child is suffering from a progressively chronic or irreversibly fatal illness and it is determined that there is neither a relative nor a close friend identified by the custodial parent or the legal guardian able to assume legal guardianship of the child, the custodial parent or legal guardian shall be assisted by the local social services district in transferring the care and custody of the child to an authorized agency by a written instrument in accordance with the provisions for this section which provides the transfer shall not take effect until the parent or legal guardian dies, becomes debilitated or incapacitated as defined in subdivision one of section seventeen hundred twenty-six of the surrogate's court procedure act.

(ii) Where a local social services official determines that a child is at significant risk of placement in the care and custody of the local commissioner of social services during the eighteen months immediately

following a review of such official because the custodial parent or legal guardian is suffering from a progressively chronic or irreversibly fatal illness and there is a relative or close friend identified by the custodial parent or legal guardian who is able and willing to assume care and custody of the child, but who requires foster care services and financial support thereof pursuant to section three hundred ninety-eight-a of this article, the custodial parent or legal guardian shall be assisted by the local social services district in transferring the care and custody of the child to an authorized agency by a written instrument in accordance with the provisions of this section. Such instrument shall provide that the transfer of custody shall not take effect until the parent or legal guardian dies, becomes debilitated or incapacitated as defined in subdivision one of section seventeen hundred twenty-six of the surrogate's court procedure act. If otherwise qualified, the social services official shall assist the person identified to accept care and custody of the child to become certified as a foster parent.

(iii) A local social services official who accepts or proposes to accept the care and custody of a child by means of a written instrument executed pursuant to this paragraph, shall, pursuant to section three hundred fifty-eight-a of this chapter, petition the family court of the county or city in which the local social services official has his or her office to approve such written instrument. A written instrument executed pursuant to this paragraph and approved pursuant to section three hundred fifty-eight-a of this chapter shall be in effect until the court reviews the child's placement pursuant to article ten-A of the family court act. The status of a child subject to such an instrument shall be reviewed by the court pursuant to article ten-A of the family court act.

(iv) Upon receiving a notice from the custodial parent or the legal guardian that the parent or legal guardian is no longer debilitated or incapacitated and that the parent or legal guardian requests the immediate return of the child, the social services district shall return such child to the parent or legal guardian within ten days of receiving notice, except where a contrary court order has been issued pursuant to part two, five or seven of article ten of the family court act.

3. Amendment. (a) The parties to the instrument or anyone acting on their behalf with their consent may amend it by mutual consent but only by a supplemental instrument executed in the same manner as the original instrument. The supplemental instrument shall be attached to, and become part of, the original instrument. The supplemental instrument shall contain the recitation required in paragraph (c) of subdivision two of this section.

(b) The instrument shall also be deemed amended where ordered by the family court pursuant to the provisions of paragraph (d) of subdivision ten of section three hundred fifty-eight-a of this chapter.

4. Execution. The instrument shall be executed in the presence of one or more witnesses and shall include only the provisions, terms and conditions agreed upon by the parties thereto.

5. Records. The instrument shall be kept in a file maintained for that purpose by the agency accepting the care and custody of the child. A copy of the instrument shall be given to the parent or guardian at the time of the execution of the instrument.

6. An instrument executed pursuant to the provisions of this section shall not constitute a remand or commitment pursuant to this chapter.

S 6. The office of children and family services shall, within six months of the effective date of this act:

(a) amend its internal policies, manuals and practices to comply with the provisions of this act;

(b) make every effort to ensure that local social services districts comply with the provisions of this act; and

(c) initiate formal proceedings to amend its rules and regulations including, but not limited to, section 430.10 of title 18 of the official compilation of codes, rules and regulations of the state of New York.

S 7. The commissioner of the office of children and family services shall submit two reports to the governor and the legislature, the first of which shall be delivered eighteen months after the effective date of this act and the second report shall be delivered thirty-six months after the first report which shall include:

(a) an analysis of the impact of this act on local social services districts to include but not be limited to obstacles to implementation, changes in parental attitudes and/or participation in planning for their child, impact on placement outcomes, and recommendations; and

(b) related feedback and recommendations from parents who have sought to retain custody of their children being placed by a local social services official, when the primary reason for such placement is the provision of necessary services for the child's emotional, behavioral or mental disorder.

S 8. This act shall take effect immediately; provided that the amendments to paragraph (b) of subdivision 1 of section 358-a of the social services law made by section three of this act shall be subject to the expiration and reversion of such paragraph pursuant to section 28 of part C of chapter 83 of the laws of 2002, as amended when upon such date the provisions of section four of this act shall take effect.