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

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I N A S S E M B L Y

February 1, 2016

Introduced by M. of A. LUPARDO -- read once and referred to the Committee on Children and Families

AN ACT to amend the family court act, in relation to participation by children in permanency hearings

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

Section 1. Subparagraph (iii) of paragraph 1 of subdivision (b) of section 1089 of the family court act, as added by a chapter of the laws of 2015 amending the family court act relating to permanency hearings for youth in foster care, as proposed in legislative bills numbers S.5258-A and A.7679, is amended to read as follows:

(iii) [if the child is age ten or older, the notice of the permanency hearing shall also be provided to the child. The child has a right to be present at the hearing, except upon a waiver of that right after consultation with the attorney for the child. Upon an application by] the attorney for the child[, the court shall grant an adjournment whenever necessary to protect the child's right to meaningfully participate in the hearing].

(1-A) IF THE CHILD IS AGE TEN OR OLDER, NO LATER THAN FOURTEEN DAYS BEFORE THE DATE CERTAIN FOR A PERMANENCY HEARING SCHEDULED PURSUANT TO THIS SECTION, THE LOCAL SOCIAL SERVICES DISTRICT SHALL SERVE THE NOTICE OF THE PERMANENCY HEARING BY REGULAR MAIL UPON THE CHILD. NOTHING HEREIN SHALL BE DEEMED TO PREVENT AN ATTORNEY FOR THE CHILD FROM CONSULTING WITH THE CHILD ABOUT THE CHILD'S PARTICIPATION IN THE PERMANENCY HEARING AS REQUIRED BY SECTION ONE THOUSAND NINETY-A OF THIS ARTICLE PRIOR TO THE SERVICE OF THE NOTICE REQUIRED PURSUANT TO THIS PARAGRAPH.

S 2. The family court act is amended by adding a new section 1090-a to read as follows:

S 1090-A. PARTICIPATION OF CHILDREN IN THEIR PERMANENCY HEARINGS. (A)(1) AS PROVIDED FOR IN SUBDIVISION (D) OF SECTION ONE THOUSAND EIGHTY-NINE OF THIS ARTICLE, THE PERMANENCY HEARING SHALL INCLUDE AN AGE APPROPRIATE CONSULTATION WITH THE CHILD.

(2) EXCEPT AS OTHERWISE PROVIDED FOR IN THIS SECTION, CHILDREN AGE TEN AND OVER HAVE THE RIGHT TO PARTICIPATE IN THEIR PERMANENCY HEARINGS AND

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

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A CHILD MAY ONLY WAIVE SUCH RIGHT FOLLOWING CONSULTATION WITH HIS OR HER ATTORNEY.

(3) NOTHING IN THIS SECTION SHALL BE DEEMED TO LIMIT THE ABILITY OF A CHILD UNDER THE AGE OF TEN YEARS OLD FROM PARTICIPATING IN HIS OR HER PERMANENCY HEARING. ADDITIONALLY, NOTHING HEREIN SHALL BE DEEMED TO REQUIRE AN ATTORNEY FOR THE CHILD TO MAKE A MOTION TO ALLOW FOR SUCH PARTICIPATION. THE COURT SHALL HAVE THE DISCRETION TO DETERMINE THE MANNER AND EXTENT TO WHICH ANY PARTICULAR CHILD UNDER THE AGE OF TEN MAY PARTICIPATE IN HIS OR HER PERMANENCY HEARING BASED ON THE BEST INTERESTS OF THE CHILD.

(B)(1) A CHILD AGE FOURTEEN AND OLDER SHALL BE PERMITTED TO PARTICIPATE IN PERSON IN ALL OR ANY PORTION OF HIS OR HER PERMANENCY HEARING IN WHICH HE OR SHE CHOOSES TO PARTICIPATE.

(2) FOR CHILDREN WHO ARE AT LEAST TEN YEARS OF AGE AND LESS THAN FOURTEEN YEARS OF AGE, THE COURT MAY, ON ITS OWN MOTION OR UPON THE MOTION OF THE LOCAL SOCIAL SERVICES DISTRICT, LIMIT THE CHILD'S PARTICIPATION IN ANY PORTION OF A PERMANENCY HEARING OR LIMIT THE CHILD'S IN PERSON PARTICIPATION IN ANY PORTION OF A PERMANENCY HEARING UPON A FINDING THAT DOING SO WOULD BE IN THE BEST INTERESTS OF THE CHILD. IN MAKING A DETERMINATION PURSUANT TO THIS PARAGRAPH THE COURT SHALL CONSIDER THE CHILD'S ASSERTION OF HIS OR HER RIGHT TO PARTICIPATE AND MAY ALSO CONSIDER FACTORS INCLUDING, BUT NOT LIMITED TO, THE IMPACT THAT CONTACT WITH OTHER PERSONS WHO MAY ATTEND THE PERMANENCY HEARING WOULD HAVE ON THE CHILD, THE NATURE OF THE CONTENT ANTICIPATED TO BE DISCUSSED AT THE PERMANENCY HEARING, WHETHER ATTENDING THE HEARING WOULD CAUSE EMOTIONAL DETRIMENT TO THE CHILD, AND THE CHILD'S AGE AND MATURITY LEVEL. IF THE COURT DETERMINES THAT LIMITING A CHILD'S IN PERSON PARTICIPATION IS IN HIS OR HER BEST INTERESTS, THE COURT SHALL MAKE ALTERNATIVE METHODS OF PARTICIPATION AVAILABLE, WHICH MAY INCLUDE BIFURCATING THE PERMANENCY HEARING, PARTICIPATION BY TELEPHONE OR OTHER AVAILABLE ELECTRONIC MEANS, OR THE ISSUANCE OF A WRITTEN STATEMENT TO THE COURT.

(C) EXCEPT AS OTHERWISE PROVIDED FOR IN THIS SECTION, A CHILD WHO HAS CHOSEN TO PARTICIPATE IN HIS OR HER PERMANENCY HEARING SHALL CHOOSE THE MANNER IN WHICH HE OR SHE SHALL PARTICIPATE, WHICH MAY INCLUDE PARTICIPATION IN PERSON, BY TELEPHONE OR AVAILABLE ELECTRONIC MEANS, OR THE ISSUANCE OF A WRITTEN STATEMENT TO THE COURT.

(D)(1) FOR CHILDREN WHO ARE AGE TEN AND OVER, THE ATTORNEY FOR THE CHILD SHALL CONSULT WITH THE CHILD REGARDING WHETHER THE CHILD WOULD LIKE TO ASSERT HIS OR HER RIGHT TO PARTICIPATE IN THE PERMANENCY HEARING AND IF SO, THE EXTENT AND MANNER IN WHICH HE OR SHE WOULD LIKE TO PARTICIPATE.

(2) THE ATTORNEY FOR THE CHILD SHALL NOTIFY THE ATTORNEYS FOR ALL PARTIES AND THE COURT AT LEAST TEN DAYS IN ADVANCE OF THE SCHEDULED HEARING WHETHER OR NOT THE CHILD IS ASSERTING HIS OR HER RIGHT TO PARTICIPATE, AND IF SO, THE MANNER IN WHICH THE CHILD HAS CHOSEN TO PARTICIPATE.

(3) (I) THE COURT SHALL GRANT AN ADJOURNMENT WHENEVER NECESSARY TO ACCOMMODATE THE RIGHT OF A CHILD TO PARTICIPATE IN HIS OR HER PERMANENCY HEARING IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

(II) NOTWITHSTANDING PARAGRAPH TWO OF THIS SUBDIVISION, THE FAILURE OF AN ATTORNEY FOR THE CHILD TO NOTIFY THE COURT OF THE REQUEST OF A CHILD AGE TEN OR OLDER TO PARTICIPATE IN HIS OR HER PERMANENCY HEARING SHALL NOT BE GROUNDS TO PREVENT SUCH CHILD FROM PARTICIPATING IN HIS OR HER PERMANENCY HEARING UNLESS A FINDING TO LIMIT THE CHILD'S PARTICIPATION IS MADE IN ACCORDANCE WITH PARAGRAPH TWO OF SUBDIVISION (B) OF THIS SECTION.

(4) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, UPON THE CONSENT OF THE ATTORNEY FOR THE CHILD, THE COURT MAY PROCEED TO CONDUCT A PERMANENCY HEARING IF THE ATTORNEY FOR THE CHILD HAS NOT CONDUCTED A MEANINGFUL CONSULTATION WITH THE CHILD REGARDING HIS OR HER PARTICIPATION IN THE PERMANENCY HEARING IF THE COURT FINDS THAT:

(I) THE CHILD LACKS THE MENTAL CAPACITY TO CONSULT MEANINGFULLY WITH HIS OR HER ATTORNEY AND CANNOT UNDERSTAND THE NATURE AND CONSEQUENCES OF THE PERMANENCY HEARING AS A RESULT OF A SIGNIFICANT COGNITIVE LIMITATION AS DETERMINED BY A HEALTH OR MENTAL HEALTH PROFESSIONAL OR EDUCATIONAL PROFESSIONAL AS PART OF A COMMITTEE ON SPECIAL EDUCATION AND SUCH LIMITATION IS DOCUMENTED IN THE COURT RECORD OR THE PERMANENCY HEARING REPORT;

(II) THE ATTORNEY FOR THE CHILD HAS MADE DILIGENT AND REPEATED EFFORTS TO CONSULT WITH THE CHILD AND THE CHILD WAS EITHER UNRESPONSIVE, UNREACHABLE, OR DECLINED TO CONSULT WITH HIS OR HER ATTORNEY; PROVIDED, HOWEVER THAT THE FAILURE OF A FOSTER PARENT OR AGENCY TO COOPERATE IN MAKING THE CHILD REACHABLE OR AVAILABLE SHALL NOT BE GROUNDS TO PROCEED WITHOUT CONSULTING WITH THE CHILD;

(III) AT THE TIME CONSULTATION WAS ATTEMPTED, THE CHILD WAS ABSENT WITHOUT LEAVE FROM FOSTER CARE; OR

(IV) DEMONSTRATIVE EVIDENCE THAT OTHER GOOD CAUSE EXISTS AND CANNOT BE ALLEVIATED IN A TIMELY MANNER.

(E) IF AN ADJOURNMENT IS GRANTED PURSUANT TO PARAGRAPH THREE OF SUBDIVISION (D) OF THIS SECTION, THE COURT MAY, UPON ITS OWN MOTION OR UPON THE MOTION OF ANY PARTY OR THE ATTORNEY FOR THE CHILD, MAKE A FINDING THAT REASONABLE EFFORTS HAVE BEEN MADE TO EFFECTUATE THE CHILD'S APPROVED PERMANENCY PLAN AS SET FORTH IN SUBPARAGRAPH (III) OF PARAGRAPH TWO OF SUBDIVISION (D) OF SECTION ONE THOUSAND EIGHTY-NINE OF THIS ARTICLE; SUCH FINDING SHALL BE MADE IN A WRITTEN ORDER.

(F) NOTHING IN THIS SECTION SHALL CONTRAVENE THE REQUIREMENTS CONTAINED IN SUBPARAGRAPH (II) OF PARAGRAPH ONE OF SUBDIVISION (A) OF SECTION ONE THOUSAND EIGHTY-NINE OF THIS ARTICLE THAT THE PERMANENCY HEARING BE COMPLETED WITHIN THIRTY DAYS OF THE SCHEDULED DATE CERTAIN.

(G) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO COMPEL A CHILD WHO DOES NOT WISH TO PARTICIPATE IN HIS OR HER PERMANENCY HEARING TO DO SO.

S 3. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2015 amending the family court act relating to permanency hearings for youth in foster care, as proposed in legislative bills numbers S.5258-A and A.7679, takes effect; provided however that section two of this act shall take effect on the ninetieth day after it shall have become a law.