

5068

2015-2016 Regular Sessions

I N   S E N A T E

April 29, 2015

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Introduced by Sen. FELDER -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

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:

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

3     (G) THE COURT MAY APPROVE A PETITION BY OR AGREEMENT WITH A SOCIAL  
4     SERVICES OFFICIAL FOR THE TRANSFER FOR TEMPORARY PLACEMENT AND CARE  
5     BASED ON CHILD SERVICE NEEDS FOR THE PROVISION OF NECESSARY SERVICES FOR  
6     THE CHILD'S EMOTIONAL, BEHAVIORAL OR MENTAL DISORDER, OR MENTAL OR PHYS-  
7     ICAL DISABILITY, WITHOUT THE TRANSFER OF CUSTODY, WHICH PROVIDES THAT  
8     THE SOCIAL SERVICES OFFICIAL SHALL MAINTAIN RESPONSIBILITY FOR THE  
9     TEMPORARY PLACEMENT AND CARE OF THE CHILD. THE SOCIAL SERVICES DISTRICT  
10    SHALL BE ASSIGNED OVERALL RESPONSIBILITY FOR TEMPORARY PLACEMENT AND  
11    CARE OF THE CHILD, INCLUDING, BUT NOT LIMITED TO, EITHER THE ACTUAL OR  
12    ACTIVE SUPERVISION OF THE DEVELOPMENT OF AN INDIVIDUAL CASE PLAN FOR THE  
13    CHILD, PERIODIC REVIEW OF THE CASE PLAN AND REVIEW OF THE APPROPRIATE-  
14    NESS AND SUITABILITY OF THE PLAN AND PLACEMENT, AND ENSURING THAT PROPER  
15    CARE AND SERVICES ARE PROVIDED TO FACILITATE RETURN TO THE CHILD'S HOME  
16    OR OTHER ALTERNATIVE PERMANENT PLACEMENT, ALL IN ADHERENCE WITH STATE  
17    AND FEDERAL RULES, REGULATIONS AND POLICY INTERPRETATIONS.

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

20    (I) A SOCIAL SERVICES OFFICIAL MAY ACCEPT A TRANSFER FOR TEMPORARY  
21    PLACEMENT AND CARE OF A CHILD FOR THE PROVISION OF NECESSARY SERVICES  
22    FOR THE CHILD'S EMOTIONAL, BEHAVIORAL OR MENTAL DISORDER, OR MENTAL OR  
23    PHYSICAL DISABILITY, WITHOUT THE TRANSFER OF CUSTODY, PROVIDED THAT THE  
24    SOCIAL SERVICES OFFICIAL SHALL MAINTAIN RESPONSIBILITY FOR THE TEMPORARY  
25    PLACEMENT AND CARE OF THE CHILD. THE SOCIAL SERVICES OFFICIAL SHALL BE

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

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1 ASSIGNED OVERALL RESPONSIBILITY FOR THE TEMPORARY PLACEMENT AND CARE OF  
2 THE CHILD, INCLUDING BUT NOT LIMITED TO, EITHER ACTUAL OR ACTIVE SUPER-  
3 VISION OF THE DEVELOPMENT OF AN INDIVIDUAL CASE PLAN FOR THE CHILD,  
4 PERIODIC REVIEW OF THE CASE PLAN AND REVIEW OF THE APPROPRIATENESS AND  
5 SUITABILITY OF THE PLAN AND PLACEMENT, AND ENSURING THAT PROPER CARE AND  
6 SERVICES ARE PROVIDED TO FACILITATE RETURN TO THE CHILD'S HOME OR OTHER  
7 ALTERNATIVE PERMANENT PLACEMENT, ALL IN ADHERENCE WITH STATE AND FEDERAL  
8 RULES, REGULATIONS AND POLICY INTERPRETATIONS.

9 S 3. Section 358-a of the social services law, as amended by chapter  
10 78 of the laws of 1978, subdivision 1 and paragraph (e) of subdivision 3  
11 as amended, and paragraphs (b), (c) and (d) of subdivision 3 as added by  
12 chapter 7 of the laws of 1999, paragraph (b) of subdivision 1 as amended  
13 by section 16 of part C of chapter 83 of the laws of 2002, subdivisions  
14 2 and 3 as amended by chapter 808 of the laws of 1985, paragraph (a) of  
15 subdivision 2 as amended by chapter 671 of the laws of 2005, paragraph  
16 (b) of subdivision 2 as amended by chapter 87 of the laws of 1993,  
17 subdivision 2-a as amended by section 35, paragraph (a) and the closing  
18 paragraph of paragraph (b) of subdivision 3 as amended by section 36,  
19 paragraph (f) of subdivision 3 as amended by section 37, and subdivi-  
20 sions 7 and 8 as amended by section 39 of part A of chapter 3 of the  
21 laws of 2005, paragraph (b) of subdivision 2-a and subdivision 12 as  
22 amended by chapter 437 of the laws of 2006, subdivision 4 as amended by  
23 chapter 823 of the laws of 1987, subdivisions 5 and 9 as amended by  
24 chapter 465 of the laws of 1992, subdivision 6 and paragraphs (b) and  
25 (c) of subdivision 10 as amended by chapter 41 of the laws of 2010,  
26 subdivision 10 as added by chapter 457 of the laws of 1988, and subdivi-  
27 sion 11 as added by chapter 854 of the laws of 1990, is amended to read  
28 as follows:

29 S 358-a. Dependent children in foster care. (1) Initiation of judicial  
30 proceeding. (a) A social services official who accepts or proposes to  
31 accept the custody and guardianship of a child by means of an instrument  
32 executed pursuant to the provisions of section three hundred eighty-four  
33 of this chapter, or the TRANSFER FOR TEMPORARY PLACEMENT AND CARE OR  
34 care and custody of a child as a public charge by means of an instrument  
35 executed pursuant to the provisions of section three hundred eighty-  
36 four-a of this chapter, shall determine whether such child is likely to  
37 remain in the care of such official for a period in excess of thirty  
38 consecutive days. If such official determines that the child is likely  
39 to remain in care for a period in excess of thirty consecutive days,  
40 such official shall petition the family court judge of the county or  
41 city in which the social services official has his or her office, to  
42 approve such instrument upon a determination that the placement of the  
43 child is in the best interest of the child, that it would be contrary to  
44 the welfare of the child to continue in his or her own home and, that  
45 where appropriate, reasonable efforts were made prior to the placement  
46 of the child into foster care to prevent or eliminate the need for  
47 removal of the child from his or her home and that prior to the initi-  
48 ation of the court proceeding required to be held by this subdivision,  
49 reasonable efforts were made to make it possible for the child to return  
50 safely home. In the case of a child [whose] WHO HAS EITHER BEEN TRANS-  
51 FERRED FOR TEMPORARY PLACEMENT AND CARE OR FOR care and custody [have]  
52 AND HAS been transferred to a social services official by means of an  
53 instrument executed pursuant to the provisions of section three hundred  
54 eighty-four-a of this chapter, approval of the instrument shall only be  
55 made upon an additional determination that all of the requirements of  
56 such section have been satisfied.

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

26 (2) Contents of petition. (a) Any petition required or authorized  
27 pursuant to subdivision one of this section shall allege whether the  
28 parent, parents or guardian executed the instrument because the parent,  
29 parents or guardian would be unable to make adequate provision for the  
30 care, maintenance and supervision of such child in his or their own  
31 home, and shall include facts supporting the petition. [The] IF THE  
32 CARE AND CUSTODY OF THE CHILD HAS BEEN TRANSFERRED THE petition shall  
33 contain a notice in conspicuous print providing that if the child  
34 remains in foster care for fifteen of the most recent twenty-two months,  
35 the agency may be required by law to file a petition to terminate  
36 parental rights. IF THE TEMPORARY PLACEMENT AND CARE OF THE CHILD HAS  
37 BEEN TRANSFERRED, THE PETITION SHALL CONTAIN A NOTICE IN CONSPICUOUS  
38 PRINT PROVIDING THAT IF THE PARENT FAILS TO COMPLY WITH THE REQUIREMENTS  
39 SET FORTH IN SUBPARAGRAPH (V) OF PARAGRAPH (C) OF SUBDIVISION TWO OF  
40 SECTION THREE HUNDRED EIGHTY-FOUR-A OF THIS ARTICLE, THE AGENCY SHALL BE  
41 REQUIRED TO FILE A PETITION FOR THE TRANSFER OF CARE AND CUSTODY OF THE  
42 CHILD TO AN AUTHORIZED AGENCY. The petition shall also set forth the  
43 names and last known addresses of all persons required to be given  
44 notice of the proceeding, pursuant to this section and section three  
45 hundred eighty-four-c of this chapter, and there shall be shown by the  
46 petition or by affidavit or other proof satisfactory to the court that  
47 there are no persons other than those set forth in the petition who are  
48 entitled to notice pursuant to the provisions of this section or of  
49 section three hundred eighty-four-c of this chapter. The petition shall  
50 also set forth the efforts which were made, prior to the placement of  
51 the child into foster care, to prevent or eliminate the need for removal  
52 of the child from his or her home and the efforts which were made prior  
53 to the filing of the petition to make it possible for the child to  
54 return safely home. If such efforts were not made, the petition shall  
55 set forth the reasons why these efforts were not made. The petition  
56 shall request that, pending any hearing which may be required by the

1 family court judge, a temporary order be made transferring THE TEMPORARY  
2 PLACEMENT AND CARE OR the care and custody of the child to the social  
3 services official in accordance with the provisions of subdivision three  
4 of this section. In the case of a child [whose] WHO HAS EITHER BEEN  
5 TRANSFERRED FOR TEMPORARY PLACEMENT AND CARE OR FOR care and custody  
6 [have been transferred] to a social services official by means of an  
7 instrument executed pursuant to section three hundred eighty-four-a of  
8 this chapter, the petition shall also allege and there shall be shown by  
9 affidavit or other proof satisfactory to the court that all the require-  
10 ments of such section have been satisfied[, including]. IF THE CARE AND  
11 CUSTODY OF THE CHILD HAS BEEN TRANSFERRED SUCH REQUIREMENTS SHALL  
12 INCLUDE the results of the investigation to locate relatives of the  
13 child, including any non-respondent parent and all of the child's grand-  
14 parents. Such results shall include whether any relative who has been  
15 located expressed an interest in becoming a foster parent for the child  
16 or in seeking custody or care of the child.

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

27 (2-a) Continuing jurisdiction. (a) The court shall possess continuing  
28 jurisdiction over the parties until the child is discharged from place-  
29 ment and all orders regarding supervision, protection or services have  
30 expired.

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

36 (3) Disposition of petition. (a) If the court is satisfied that the  
37 parent, parents or guardian executed such instrument knowingly and  
38 voluntarily and because he or she would be unable to make adequate  
39 provision for the care, maintenance and supervision of such child in his  
40 or her home, and that the requirements of section three hundred eighty-  
41 four-a of this chapter, if applicable, have been satisfied and that  
42 where appropriate, reasonable efforts were made prior to the placement  
43 of the child into foster care to prevent or eliminate the need for  
44 removal of the child from his or her home and that prior to the initi-  
45 ation of the court proceeding required to be held by subdivision one of  
46 this section, reasonable efforts were made to make it possible for the  
47 child to return safely to his or her home, the court may find and deter-  
48 mine that the best interests and welfare of the child would be promoted  
49 by removal of the child from such home, and that it would be contrary to  
50 the welfare of such child for the child to continue in such home, and  
51 the court shall thereupon grant the petition and approve such instrument  
52 and the transfer of the custody and guardianship or THE TRANSFER FOR  
53 TEMPORARY PLACEMENT AND CARE OR care and custody of such child to such  
54 social services official in accordance therewith. If the court deter-  
55 mines that, where appropriate, reasonable efforts were made prior to the  
56 placement of the child into foster care to prevent or eliminate the need

1 for removal of the child from his or her home, that prior to the initi-  
2 ation of the court proceeding reasonable efforts were made to make it  
3 possible for the child to return safely to his or her home, or that it  
4 would be contrary to the best interests of the child to continue in the  
5 home, or that reasonable efforts to prevent or eliminate the need for  
6 removal of the child from the home were not made but that the lack of  
7 such efforts was appropriate under the circumstances, the court order  
8 shall include such findings. Approval of such instrument in a proceed-  
9 ing pursuant to this section shall not constitute a remand or commitment  
10 pursuant to this chapter and shall not preclude challenge in any other  
11 proceeding to the validity of the instrument. If the permanency plan for  
12 the child is adoption, guardianship, permanent placement with a fit and  
13 willing relative or another planned permanent living arrangement other  
14 than reunification with the parent or parents of the child, the court  
15 must consider and determine in its order whether reasonable efforts are  
16 being made to make and finalize such alternate permanent placement.

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

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

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

31 (3) the parent of such child has been convicted of an attempt to  
32 commit any of the foregoing crimes, and the victim or intended victim  
33 was the child or another child of the parent; or has been convicted of  
34 criminal solicitation as defined in article one hundred, conspiracy as  
35 defined in article one hundred five or criminal facilitation as defined  
36 in article one hundred fifteen of the penal law for conspiring, solicit-  
37 ing or facilitating any of the foregoing crimes, and the victim or  
38 intended victim was the child or another child of the parent;

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

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

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

52 unless the court determines that providing reasonable efforts would be  
53 in the best interests of the child, not contrary to the health and safe-  
54 ty of the child, and would likely result in the reunification of the  
55 parent and the child in the foreseeable future. The court shall state  
56 such findings in its order.

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

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

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

25 (e) The order granting the petition of a social services official and  
26 approving an instrument executed pursuant to section three hundred  
27 eighty-four-a of this chapter may include conditions, where appropriate  
28 and specified by the judge, requiring the implementation of a specific  
29 plan of action by the social services official to exercise diligent  
30 efforts toward the discharge of the child from care, either to his own  
31 family or to an adoptive home; provided, however, that such plan shall  
32 not include the provision of any service or assistance to the child and  
33 his or her family which is not authorized or required to be made avail-  
34 able pursuant to the comprehensive annual services program plan then in  
35 effect. An order of placement shall include, at the least:

36 (i) a description of the visitation plan;

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

42 A copy of the court's order and the service plan shall be given to the  
43 respondent. [The] IF THE CARE AND CUSTODY OF THE CHILD HAS BEEN TRANS-  
44 FERRED THE order shall also contain a notice that if the child remains  
45 in foster care for more than fifteen of the most recent twenty-two  
46 months, the agency may be required by law to file a petition to termi-  
47 nate parental rights. IF THE TEMPORARY PLACEMENT AND CARE OF THE CHILD  
48 HAS BEEN TRANSFERRED THE ORDER SHALL ALSO CONTAIN A NOTICE THAT IF THE  
49 RESPONDENT FAILS TO COMPLY WITH THE REQUIREMENTS SET FORTH IN SUBPARA-  
50 GRAPH (V) OF PARAGRAPH (C) OF SUBDIVISION TWO OF SECTION THREE HUNDRED  
51 EIGHTY-FOUR-A OF THIS ARTICLE, THE AGENCY SHALL BE REQUIRED TO FILE A  
52 PETITION FOR THE TRANSFER OF CARE AND CUSTODY OF THE CHILD TO AN AUTHOR-  
53 IZED AGENCY.

54 Nothing in such order shall preclude either party to the instrument  
55 from exercising its rights under this section or under any other  
56 provision of law relating to the return of the care OR CARE and custody

1 of the child by the social services official to the parent, parents or  
2 guardian. Violation of such [on] AN order shall be subject to punishment  
3 pursuant to section seven hundred fifty-three of the judiciary law.

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

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

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

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

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

50 (5) Hearing and waiver. The instrument may include a consent by the  
51 parent, parents or guardian to waiver of any hearing and that a determi-  
52 nation may be made by the family court judge based solely upon the peti-  
53 tion, and other papers and affidavits, if any, submitted to the family  
54 court judge, provided, however, that a waiver of hearing by a parent or  
55 guardian who has EITHER transferred TEMPORARY PLACEMENT AND CARE OR the  
56 care and custody of a child to an authorized agency, pursuant to section

1 three hundred eighty-four-a of this chapter, shall be effective only if  
2 such waiver was executed in an instrument separate from that trans-  
3 ferring EITHER TEMPORARY PLACEMENT AND CARE OR the [child's] care and  
4 custody OF THE CHILD. In any case where an effective waiver has been  
5 executed, the family court judge may dispense with a hearing, approve  
6 the instrument and EITHER the transfer of [the] custody and guardianship  
7 or THE TRANSFER FOR TEMPORARY PLACEMENT AND CARE OR THE care and custody  
8 of the child to the social services official and make the requisite  
9 findings and determinations provided for in subdivision three of this  
10 section, if it appears to the satisfaction of the family court judge  
11 that the allegations in the petition are established sufficiently to  
12 warrant the family court judge to grant such petition, to make such  
13 findings and determination, and to issue such order.

14 In any case where a hearing is required, the family court judge, if  
15 the holding of an immediate hearing on notice is impractical, may forth-  
16 with, upon the basis of the instrument and the allegations of the peti-  
17 tion, make a temporary finding that the parent, parents, or guardian of  
18 the child are unable to make adequate provision for the care, mainte-  
19 nance and supervision of such child in the child's own home and that the  
20 best interest and welfare of the child will be promoted by the removal  
21 of such child from such home and thereupon, the family court judge shall  
22 make a temporary order transferring EITHER THE TEMPORARY PLACEMENT AND  
23 CARE OR the care and custody of such child to the social services offi-  
24 cial, and shall set the matter down for hearing on the first feasible  
25 date.

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

30 (7) Return of child. If an instrument provides for the return of the  
31 care OR CARE and custody of a child by the local social services offi-  
32 cial to the parent, parents or guardian upon any terms and conditions or  
33 at any time, the local social services official shall comply with such  
34 terms of such instrument without further court order. Every order  
35 approving an instrument providing for the transfer of the care OR CARE  
36 and custody of a child to a local social services official shall be  
37 served upon the parent, parents or guardian who executed such instrument  
38 in such manner as the family court judge may provide in such order,  
39 together with a notice of the terms and conditions under which the care  
40 OR CARE and custody of such child may be returned to the parent, parents  
41 or guardian. If an instrument provides for the return of the care OR  
42 CARE and custody of a child by the local social services official to the  
43 parent, parents or guardian without fixing a definite date for such  
44 return, or if the local social services official shall fail to return a  
45 child to the care OR CARE and custody of the child's parent, parents or  
46 guardian in accordance with the terms of the instrument, the parent,  
47 parents or guardian may seek such care OR CARE and custody by motion for  
48 return of such child and order to show cause in such proceeding or by  
49 writ of habeas corpus in the supreme court. Nothing in this subdivision  
50 shall limit the requirement for a permanency hearing pursuant to article  
51 ten-A of the family court act.

52 (8) Appealable orders. Any order of a family court denying any peti-  
53 tion of a local social services official filed pursuant to this section,  
54 or any order of a family court granting or denying any motion filed by a  
55 parent, parents or guardian for return of a child pursuant to this



1 section, shall be deemed an order of disposition appealable pursuant to  
2 article eleven of the family court act.

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

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

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

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

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

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

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

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

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

55 (b) The social services official shall initiate the proceeding by  
56 filing the petition as soon as practicable, but in no event later than

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

26 S 5. Section 384-a of the social services law, as amended by chapter  
27 669 of the laws of 1976, subdivision 1 as amended by section 52, subdi-  
28 vision 1-b as added by section 53 and paragraph (a) and subparagraph  
29 (iii) of paragraph (h) of subdivision 2 as amended by section 54 of part  
30 A of chapter 3 of the laws of 2005, subdivision 1-a as amended by chap-  
31 ter 671 of the laws of 2005, subdivision 2 as separately amended by  
32 chapter 666 of the laws of 1976, paragraph (c) of subdivision 2 as  
33 amended by chapter 256 of the laws of 1990, subparagraph (i) of para-  
34 graph (c) of subdivision 2 as amended by chapter 69 of the laws of 1991,  
35 subparagraph (ix) of paragraph (c) of subdivision 2 as added by chapter  
36 7 of the laws of 1999, paragraphs (d) and (e) as added and paragraph (g)  
37 of subdivision 2 as relettered and subdivision 3 as amended by chapter  
38 457 of the laws of 1988, paragraph (f) of subdivision 2 as amended by  
39 chapter 41 of the laws of 2010, paragraph (g) of subdivision 2 as added  
40 by chapter 947 of the laws of 1981, and paragraph (h) of subdivision 2  
41 as added by chapter 477 of the laws of 2000, is amended to read as  
42 follows:

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

50 (A) TRANSFER RESPONSIBILITY FOR TEMPORARY PLACEMENT AND CARE OF A  
51 CHILD SO THEY MAY RECEIVE NECESSARY SERVICES FOR AN EMOTIONAL, BEHAV-  
52 IORAL OR MENTAL DISORDER, OR MENTAL OR PHYSICAL DISABILITY TO AN AUTHOR-  
53 IZED AGENCY BY A WRITTEN INSTRUMENT IN ACCORDANCE WITH THE PROVISIONS OF  
54 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

1 of this article; provided, however, that the failure to provide such  
2 information shall not invalidate the transfer of care and custody.

3 2. Terms. (a) The instrument shall be upon such terms, for such time  
4 and subject to such conditions as may be agreed upon by the parties  
5 thereto. The office of children and family services may promulgate  
6 suggested terms and conditions for inclusion in such instruments, but  
7 shall not require that any particular terms and conditions be included.  
8 If the instrument provides that the child is to be returned by the  
9 authorized agency on a date certain or upon the occurrence of an iden-  
10 tifiable event, such agency shall return such child at such time unless  
11 such action would be contrary to court order entered at any time prior  
12 to such date or event or within ten days thereafter pursuant to section  
13 three hundred eighty-four-b of this title or article six, ten, or ten-A  
14 of the family court act or unless and so long as the parent or guardian  
15 is unavailable or incapacitated to receive the child. The parent or  
16 guardian may, upon written notice to such agency, request return of the  
17 child at any time prior to the identified date or event[, whereupon]. IF  
18 THE RESPONSIBILITY OF THE CHILD HAS BEEN TRANSFERRED FOR TEMPORARY  
19 PLACEMENT AND CARE, SUCH AGENCY SHALL RETURN THE CHILD. IF THE CARE AND  
20 CUSTODY OF THE CHILD HAS BEEN TRANSFERRED such agency may, without court  
21 order, return the child or, within ten days after such request, may  
22 notify the parent or guardian that such request is denied. If such agen-  
23 cy denies or fails to act upon such request, the parent or guardian may  
24 seek return of the care and custody of the child by motion in family  
25 court for return of such child and order to show cause, or by writ of  
26 habeas corpus in the supreme court or family court. If the instrument  
27 fails to specify a date or identifiable event upon which such agency  
28 shall return such child, such agency shall return the child within twen-  
29 ty days after having received notice that the parent or guardian wishes  
30 the child returned, unless such action would be contrary to court order  
31 entered at any time prior to the expiration of such twenty day period  
32 pursuant to section three hundred eighty-four-b of this title or article  
33 six, ten, or ten-A of the family court act. Expenditures by a local  
34 social services district for the care and maintenance of a child who has  
35 been continued in the care of an authorized agency in violation of the  
36 provisions of this subdivision shall not be subject to state reimburse-  
37 ment.

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

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

53 (i) that the parent or guardian has the right, prior to signing the  
54 instrument transferring EITHER THE RESPONSIBILITY OF THE CHILD FOR  
55 TEMPORARY PLACEMENT AND CARE OR TRANSFERRING the care and custody of the  
56 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

1 the family court or supreme court or that a written agreement as  
2 described in section two hundred thirty-six of the domestic relations  
3 law between the parents confers such rights, any instrument executed  
4 pursuant to this section shall incorporate the provisions of such order,  
5 judgment or agreement to the extent that visitation rights are affected  
6 and shall provide for visitation or other rights as required by such  
7 order, judgment or agreement. Such incorporation shall not preclude a  
8 social services official from exercising his authority pursuant to para-  
9 graph (e) or (f) of this subdivision.

10 (e) Where a social services official opposes incorporation of an  
11 order, judgment or agreement described in paragraph (d) of this subdivi-  
12 sion, such official may, upon execution of the instrument described in  
13 this section and upon notice to the non-custodial parent or grandparent  
14 named in such order, judgment or agreement, be heard thereon in a  
15 proceeding pursuant to section three hundred fifty-eight-a of this chap-  
16 ter.

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

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

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

49 (ii) Where a local social services official determines that a child is  
50 at significant risk of placement in the care and custody of the local  
51 commissioner of social services during the eighteen months immediately  
52 following a review of such official because the custodial parent or  
53 legal guardian is suffering from a progressively chronic or irreversibly  
54 fatal illness and there is a relative or close friend identified by the  
55 custodial parent or legal guardian who is able and willing to assume  
56 care and custody of the child, but who requires foster care services and

1 financial support thereof pursuant to section three hundred ninety-  
2 eight-a of this article, the custodial parent or legal guardian shall be  
3 assisted by the local social services district in transferring the care  
4 and custody of the child to an authorized agency by a written instrument  
5 in accordance with the provisions of this section. Such instrument shall  
6 provide that the transfer of custody shall not take effect until the  
7 parent or legal guardian dies, becomes debilitated or incapacitated as  
8 defined in subdivision one of section seventeen hundred twenty-six of  
9 the surrogate's court procedure act. If otherwise qualified, the social  
10 services official shall assist the person identified to accept care and  
11 custody of the child to become certified as a foster parent.

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

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

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

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

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

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

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

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

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

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



1 (c) initiate formal proceedings to amend its rules and regulations  
2 including, but not limited to, section 430.10 of title 18 of the offi-  
3 cial compilation of codes, rules and regulations of the state of New  
4 York.

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

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

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

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