

5019

2015-2016 Regular Sessions

I N   S E N A T E

April 28, 2015

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Introduced by Sen. FELDER -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the family court act, in relation to permanency planning in juvenile delinquency and persons in need of supervision proceedings in family court

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

1     Section 1. Section 312.1 of the family court act is amended by adding  
2     a new subdivision 4 to read as follows:  
3     4. UPON THE FILING OF A PETITION UNDER THIS ARTICLE, THE PRESENTMENT  
4     AGENCY SHALL NOTIFY ANY NON-CUSTODIAL PARENTS OF THE RESPONDENT WHO HAD  
5     NOT BEEN ISSUED A SUMMONS IN ACCORDANCE WITH SUBDIVISION ONE OF THIS  
6     SECTION, PROVIDED THAT THE ADDRESSES OF ANY SUCH PARENTS HAVE BEEN  
7     PROVIDED. THE PROBATION DEPARTMENT AND PRESENTMENT AGENCY SHALL ASK THE  
8     CUSTODIAL PARENT OR PERSON LEGALLY RESPONSIBLE FOR INFORMATION REGARDING  
9     ANY OTHER PARENT OR PARENTS OF THE RESPONDENT. THE NOTICE SHALL INFORM  
10    THE PARENT OR PARENTS OF THE RIGHT TO APPEAR AND PARTICIPATE IN THE  
11    PROCEEDING AND TO SEEK TEMPORARY RELEASE OR, UPON DISPOSITION, DIRECT  
12    PLACEMENT OF THE RESPONDENT. THE PRESENTMENT AGENCY SHALL SEND THE  
13    NOTICE TO THE NON-CUSTODIAL PARENT AT LEAST FIVE DAYS BEFORE THE RETURN  
14    DATE. THE FAILURE OF A PARENT ENTITLED TO NOTICE TO APPEAR SHALL NOT BE  
15    CAUSE FOR DELAY OF THE RESPONDENT'S INITIAL APPEARANCE, AS DEFINED BY  
16    SECTION 320.1 OF THIS ARTICLE.  
17    S 2. Subdivision 2 of section 320.2 of the family court act, as  
18    amended by chapter 41 of the laws of 2010, is amended to read as  
19    follows:  
20    2. At the initial appearance the court must appoint an attorney to  
21    represent the respondent pursuant to the provisions of section two  
22    hundred forty-nine OF THIS ACT if independent legal representation is  
23    not available to such respondent.     WHENEVER AN ATTORNEY HAS BEEN

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

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1 APPOINTED BY THE FAMILY COURT TO REPRESENT A CHILD IN A PROCEEDING UNDER  
2 THIS ARTICLE, SUCH APPOINTMENT SHALL CONTINUE WITHOUT FURTHER COURT  
3 ORDER OR APPOINTMENT DURING THE PERIOD COVERED BY ANY ORDER OF DISPOSI-  
4 TION ISSUED BY THE COURT, AN ADJOURNMENT IN CONTEMPLATION OF DISMISSAL,  
5 OR ANY EXTENSION OR VIOLATION THEREOF, OR DURING ANY PERMANENCY HEARING,  
6 OTHER POST-DISPOSITIONAL PROCEEDING OR APPEAL. ALL NOTICES AND REPORTS  
7 REQUIRED BY LAW SHALL BE PROVIDED TO SUCH ATTORNEY. SUCH APPOINTMENT  
8 SHALL CONTINUE UNLESS ANOTHER APPOINTMENT OF AN ATTORNEY HAS BEEN MADE  
9 BY THE COURT OR UNLESS SUCH ATTORNEY MAKES APPLICATION TO THE COURT TO  
10 BE RELIEVED OF HIS OR HER APPOINTMENT. UPON APPROVAL OF SUCH APPLICATION  
11 TO BE RELIEVED, THE COURT SHALL IMMEDIATELY APPOINT ANOTHER ATTORNEY TO  
12 WHOM ALL NOTICES AND REPORTS REQUIRED BY LAW SHALL BE PROVIDED. THE  
13 ATTORNEY FOR THE RESPONDENT SHALL BE ENTITLED TO COMPENSATION PURSUANT  
14 TO APPLICABLE PROVISIONS OF LAW FOR SERVICES RENDERED UP TO AND INCLUD-  
15 ING DISPOSITION OF THE PETITION. THE ATTORNEY SHALL, BY SEPARATE APPLI-  
16 CATION, BE ENTITLED TO COMPENSATION FOR SERVICES RENDERED AFTER THE  
17 DISPOSITION OF THE PETITION. NOTHING IN THIS SECTION SHALL BE CONSTRUED  
18 TO LIMIT THE AUTHORITY OF THE COURT TO REMOVE AN ATTORNEY FROM HIS OR  
19 HER ASSIGNMENT.

20 S 3. Section 353.3 of the family court act is amended by adding a new  
21 subdivision 4-a to read as follows:

22 4-A. (A) WHERE THE RESPONDENT IS PLACED WITH THE OFFICE OF CHILDREN  
23 AND FAMILY SERVICES OR THE COMMISSIONER OF THE LOCAL SOCIAL SERVICES  
24 DISTRICT PURSUANT TO SUBDIVISION TWO, THREE OR FOUR OF THIS SECTION, THE  
25 DISPOSITIONAL ORDER OR AN ATTACHMENT TO THE ORDER INCORPORATED BY REFER-  
26 ENCE INTO THE ORDER SHALL INCLUDE:

27 (I) A DESCRIPTION OF THE PLAN TO FACILITATE VISITATION BETWEEN THE  
28 RESPONDENT AND HIS OR HER FAMILY;

29 (II) A SERVICE PLAN, IF AVAILABLE. IF THE SERVICE PLAN HAS NOT YET  
30 BEEN DEVELOPED, THEN THE SERVICE PLAN MUST BE FILED WITH THE COURT AND  
31 DELIVERED TO THE PRESENTMENT AGENCY, ATTORNEY FOR THE RESPONDENT AND  
32 PARENT OR PARENTS OR OTHER PERSON OR PERSONS LEGALLY RESPONSIBLE FOR THE  
33 CARE OF THE RESPONDENT NO LATER THAN SIXTY DAYS FROM THE DATE THE DISPO-  
34 SITION WAS MADE; AND

35 (III) A DIRECTION THAT THE PARENT OR PARENTS OR OTHER PERSON OR  
36 PERSONS LEGALLY RESPONSIBLE FOR THE RESPONDENT SHALL BE NOTIFIED OF ANY  
37 PLANNING CONFERENCES TO BE HELD PURSUANT TO SUBDIVISION THREE OF SECTION  
38 FOUR HUNDRED NINE-E OF THE SOCIAL SERVICES LAW, OF THEIR RIGHT TO ATTEND  
39 THE CONFERENCES, AND OF THEIR RIGHT TO HAVE COUNSEL OR ANOTHER REPRES-  
40 TATIVE OR COMPANION WITH THEM.

41 (B) A COPY OF THE COURT'S ORDER AND ATTACHMENTS SHALL BE GIVEN TO THE  
42 PARENT OR PARENTS OR OTHER PERSON OR PERSONS LEGALLY RESPONSIBLE FOR THE  
43 CARE OF THE RESPONDENT. THE ORDER SHALL ALSO CONTAIN A NOTICE THAT IF  
44 THE RESPONDENT REMAINS IN PLACEMENT FOR FIFTEEN OF THE MOST RECENT TWEN-  
45 TY-TWO MONTHS, THE AGENCY WITH WHICH THE CHILD IS PLACED MAY BE REQUIRED  
46 BY LAW TO FILE A PETITION TO TERMINATE THE PARENTAL RIGHTS OF THE PARENT  
47 OR PARENTS OF THE RESPONDENT.

48 S 4. Paragraphs (a), (b) and (c) of subdivision 7 of section 353.3 of  
49 the family court act, paragraphs (a) and (b) as amended by section 6 of  
50 part G of chapter 58 of the laws of 2010, and paragraph (c) as amended  
51 by section 16 of part L of chapter 56 of the laws of 2015, are amended  
52 to read as follows:

53 (a) Where the respondent is placed pursuant to subdivision two [or],  
54 three OR FOUR of this section and where the agency is not seeking an  
55 extension of the placement pursuant to section 355.3 of this part, such

1 report shall be submitted not later than thirty days prior to the  
2 conclusion of the placement.

3 (b) Where the respondent is placed pursuant to subdivision two [or],  
4 three OR FOUR of this section and where the agency is seeking an exten-  
5 sion of the placement pursuant to section 355.3 of this part and a  
6 permanency hearing pursuant to section 355.5 of this part, such report  
7 shall be submitted not later than sixty days prior to the date on which  
8 the permanency hearing must be held and shall be annexed to the petition  
9 for a permanency hearing and extension of placement.

10 (c) Where the respondent is placed pursuant to subdivision two [or],  
11 three OR FOUR of this section, such report shall contain a plan for the  
12 release, or conditional release (pursuant to section five hundred ten-a  
13 of the executive law), of the respondent to the custody of his or her  
14 parent or other person legally responsible, or to another permanency  
15 alternative as provided in paragraph (d) of subdivision seven of section  
16 355.5 of this part. FOR PURPOSES OF THIS PARAGRAPH, "PLACEMENT AGENCY"  
17 SHALL REFER TO THE OFFICE OF CHILDREN AND FAMILY SERVICES, THE COMMIS-  
18 SIONER OF THE LOCAL SOCIAL SERVICES DISTRICT OR THE AUTHORIZED AGENCY  
19 UNDER CONTRACT WITH THE OFFICE OF CHILDREN AND FAMILY SERVICES OR  
20 COMMISSIONER OF THE LOCAL SOCIAL SERVICES DISTRICT WITH WHOM THE  
21 RESPONDENT HAS BEEN PLACED. THE RELEASE OR CONDITIONAL RELEASE PLAN  
22 SHALL PROVIDE AS FOLLOWS:

23 (I) If the respondent is subject to article sixty-five of the educa-  
24 tion law or elects to participate in an educational program leading to a  
25 high school diploma, such plan shall include, but not be limited to, the  
26 steps that the agency with which the respondent is placed has taken and  
27 will be taking IN CONJUNCTION WITH THE LOCAL EDUCATION AGENCY to [facil-  
28 itate] ENSURE the IMMEDIATE enrollment of the respondent in [a] AN  
29 APPROPRIATE school or educational program leading to a high school  
30 diploma [following] WITHIN FIVE DAYS OF release, or, if such release  
31 occurs during the summer recess, IMMEDIATELY upon the commencement of  
32 the next school term. THE PLACEMENT AGENCY SHALL ASCERTAIN THE SCHOOL  
33 CALENDAR FROM THE SCHOOL DISTRICT AND SHALL, TO THE EXTENT POSSIBLE,  
34 WORK WITH THE SCHOOL DISTRICT SO THAT THE TIMING OF RESPONDENT'S RELEASE  
35 FROM THE PROGRAM AND ENROLLMENT IN SCHOOL ARE MINIMALLY DISRUPTIVE FOR  
36 THE RESPONDENT AND FURTHER HIS OR HER BEST INTERESTS. NOT LESS THAN  
37 FOURTEEN DAYS PRIOR TO THE RESPONDENT'S RELEASE, THE PLACEMENT AGENCY  
38 SHALL NOTIFY THE SCHOOL DISTRICT WHERE THE RESPONDENT WILL BE ATTENDING  
39 SCHOOL AND TRANSFER ALL NECESSARY RECORDS, INCLUDING, BUT NOT LIMITED  
40 TO, THE RESPONDENT'S COURSE OF STUDY, CREDITS EARNED AND ACADEMIC  
41 RECORD.

42 (II) IF THE PLACEMENT AGENCY HAS REASON TO BELIEVE THAT THE RESPONDENT  
43 MAY HAVE A DISABILITY OR IF THE RESPONDENT HAD BEEN FOUND ELIGIBLE TO  
44 RECEIVE SPECIAL EDUCATION SERVICES PRIOR TO OR DURING THE PLACEMENT, IN  
45 ACCORDANCE WITH ARTICLE EIGHTY-NINE OF THE EDUCATION LAW, SUCH PLAN  
46 SHALL INCLUDE, BUT NOT BE LIMITED TO, THE STEPS THAT THE PLACEMENT AGEN-  
47 CY HAS TAKEN AND WILL BE TAKING TO ENSURE THAT THE LOCAL EDUCATION AGEN-  
48 CY MAKES ANY NECESSARY REFERRALS OR ARRANGES FOR SPECIAL EDUCATIONAL  
49 EVALUATIONS OR SERVICES, AS APPROPRIATE, AND PROVIDES NECESSARY RECORDS  
50 IMMEDIATELY IN ACCORDANCE WITH STATE AND FEDERAL LAW.

51 (III) If the respondent is not subject to article sixty-five of the  
52 education law and does not elect to participate in an educational  
53 program leading to a high school diploma, such plan shall include, but  
54 not be limited to, the steps that the agency with which the respondent  
55 is placed has taken and will be taking to assist the respondent to

1 become gainfully employed or enrolled in a vocational program following  
2 release.

3 S 5. The opening paragraph of subdivision 2, the opening paragraph of  
4 subdivision 3, subdivision 5, subdivision 6 and paragraph (d) of subdivi-  
5 sion 7 of section 355.5 of the family court act, the opening paragraph  
6 of subdivision 2 and the opening paragraph of subdivision 3 as amended  
7 by chapter 145 of the laws of 2000, subdivision 5 as added by chapter 7  
8 of the laws of 1999, subdivision 6 as amended by section 1 of part B of  
9 chapter 327 of the laws of 2007, and paragraph (d) of subdivision 7 as  
10 amended by section 18 of part L of chapter 56 of the laws of 2015, are  
11 amended and a new subdivision 10 is added to read as follows:

12 Where a respondent is placed with a commissioner of social services or  
13 the office of children and family services pursuant to SUBDIVISION TWO,  
14 THREE OR FOUR OF section 353.3 of this [article] PART for a period of  
15 twelve or fewer months and resides in a foster home or IN A non-secure  
16 OR LIMITED SECURE facility[;]:

17 Where a respondent is placed with a commissioner of social services or  
18 the office of children and family services pursuant to SUBDIVISION TWO,  
19 THREE OR FOUR OF section 353.3 of this [article] PART for a period in  
20 excess of twelve months and resides in a foster home or in a non-secure  
21 OR LIMITED SECURE facility[;]:

22 5. A petition for an initial or subsequent permanency hearing shall be  
23 filed by the office of children and family services or by the commis-  
24 sioner of social services with whom the respondent was placed. Such  
25 petition shall be filed no later than sixty days prior to the end of the  
26 month in which an initial or subsequent permanency hearing must be held,  
27 as directed in subdivision two of this section. THE PETITION SHALL BE  
28 ACCOMPANIED BY A PERMANENCY REPORT THAT CONFORMS TO THE REQUIREMENTS OF  
29 SUBDIVISION (C) OF SECTION ONE THOUSAND EIGHTY-NINE OF THIS ACT.

30 6. THE RESPONDENT AND HIS OR HER ATTORNEY SHALL BE NOTIFIED OF THE  
31 HEARING AND OF THE RESPONDENT'S RIGHT TO BE HEARD AND A COPY OF THE  
32 PERMANENCY PETITION AND ACCOMPANYING REPORT FILED IN ACCORDANCE WITH  
33 SUBDIVISION FIVE OF THIS SECTION SHALL BE SERVED ON THE RESPONDENT'S  
34 ATTORNEY. The foster parent caring for the respondent or any pre-adop-  
35 tive parent or relative providing care for the respondent, AS WELL AS  
36 PARENTS OF SIBLINGS OF THE RESPONDENT, shall be provided with notice of  
37 any permanency hearing held pursuant to this section by the office of  
38 children and family services or the LOCAL commissioner of social  
39 services with whom the respondent was placed. Such foster parent, pre-a-  
40 doptive parent and relative shall have the right to be heard at any such  
41 hearing; provided, however, no such foster parent, pre-adoptive parent  
42 or relative shall be construed to be a party to the hearing solely on  
43 the basis of such notice and right to be heard. The failure of the  
44 foster parent, pre-adoptive parent, or relative caring for the [child]  
45 RESPONDENT to appear at a permanency hearing shall constitute a waiver  
46 of the right to be heard and such failure to appear shall not cause a  
47 delay of the permanency hearing nor shall such failure to appear be a  
48 ground for the invalidation of any order issued by the court pursuant to  
49 this section.

50 (d) with regard to the completion of placement ordered by the court  
51 pursuant to section 353.3 or 355.3 of this part: whether and when the  
52 respondent: (i) will be returned to the parent OR PARENTS; (ii) should  
53 be placed for adoption with the local commissioner of social services  
54 filing a petition for termination of parental rights; (iii) should be  
55 referred for legal guardianship; (iv) should be placed permanently with  
56 a fit and willing relative; or (v) should be placed in another planned

1 permanent living arrangement with a significant connection to an adult  
2 willing to be a permanency resource for the respondent if the respondent  
3 is age sixteen or older and (A) the office of children and family  
4 services or the local commissioner of social services has documented to  
5 the court: (1) the intensive, ongoing, and, as of the date of the hear-  
6 ing, unsuccessful efforts made to return the respondent home or secure a  
7 placement for the respondent with a fit and willing relative including  
8 adult siblings, a legal guardian, or an adoptive parent, including  
9 through efforts that utilize search technology including social media to  
10 find biological family members for children, (2) the steps being taken  
11 to ensure that (I) the respondent's foster family home or child care  
12 facility is following the reasonable and prudent parent standard in  
13 accordance with guidance provided by the United States department of  
14 health and human services, and (II) the respondent has regular, ongoing  
15 opportunities to engage in age or developmentally appropriate activities  
16 including by consulting with the respondent in an age-appropriate manner  
17 about the opportunities of the respondent to participate in activities;  
18 and (B) the office of children and family services or the local commis-  
19 sioner of social services has documented to the court and the court has  
20 determined that there are compelling reasons for determining that it  
21 continues to not be in the best interest of the respondent to return  
22 home, be referred for termination of parental rights and placed for  
23 adoption, placed with a fit and willing relative, or placed with a legal  
24 guardian; and (C) the court has made a determination explaining why, as  
25 of the date of this hearing, another planned living arrangement with a  
26 significant connection to an adult willing to be a permanency resource  
27 for the respondent is the best permanency plan for the respondent; and

28 10. (A) IF THE ORDER RESULTING FROM THE PERMANENCY HEARING EXTENDS THE  
29 RESPONDENT'S PLACEMENT PURSUANT TO SECTION 355.3 OF THIS PART IN A  
30 FOSTER HOME OR NON-SECURE OR LIMITED SECURE FACILITY OR IF THE RESPOND-  
31 ENT CONTINUES IN SUCH PLACEMENT UNDER A PRIOR ORDER OF PLACEMENT OR AN  
32 EXTENSION THEREOF, THE ORDER OR AN ATTACHMENT TO THE ORDER INCORPORATED  
33 INTO THE ORDER BY REFERENCE SHALL INCLUDE:

34 (I) A DESCRIPTION OF THE PLAN TO FACILITATE VISITATION BETWEEN THE  
35 RESPONDENT AND HIS OR HER FAMILY;

36 (II) A SERVICE PLAN AIMED AT EFFECTUATING THE PERMANENCY GOAL; AND

37 (III) A DIRECTION THAT THE PARENT OR PARENTS OR OTHER PERSON OR  
38 PERSONS LEGALLY RESPONSIBLE FOR THE RESPONDENT SHALL BE NOTIFIED OF ANY  
39 PLANNING CONFERENCES, INCLUDING THOSE HELD PURSUANT TO SUBDIVISION THREE  
40 OF SECTION FOUR HUNDRED NINE-E OF THE SOCIAL SERVICES LAW, OF THEIR  
41 RIGHT TO ATTEND THE CONFERENCES, AND THEIR RIGHT TO HAVE COUNSEL OR  
42 ANOTHER REPRESENTATIVE OR COMPANION WITH THEM AND, FURTHER, THAT THE  
43 RESPONDENT, IF FOURTEEN YEARS OF AGE OR OLDER, BE INVOLVED IN THE DEVEL-  
44 OPMENT OF PLANS AS REQUIRED BY FEDERAL LAW.

45 (B) WHERE THE COURT DETERMINES THAT REASONABLE EFFORTS IN THE FORM OF  
46 SERVICES OR ASSISTANCE TO THE RESPONDENT AND HIS OR HER FAMILY WOULD  
47 FURTHER THE RESPONDENT'S NEEDS AND BEST INTERESTS AND THE NEED FOR  
48 PROTECTION OF THE COMMUNITY AND WOULD MAKE IT POSSIBLE FOR THE RESPOND-  
49 ENT TO SAFELY RETURN HOME OR TO MAKE THE TRANSITION TO INDEPENDENT  
50 LIVING, THE COURT MAY INCLUDE IN ITS ORDER A DIRECTION FOR A LOCAL  
51 SOCIAL SERVICES, MENTAL HEALTH OR PROBATION OFFICIAL OR AN OFFICIAL OF  
52 THE OFFICE OF CHILDREN AND FAMILY SERVICES OR OFFICE OF METAL HEALTH, AS  
53 APPLICABLE, TO PROVIDE OR ARRANGE FOR THE PROVISION OF SERVICES OR  
54 ASSISTANCE TO THE RESPONDENT AND HIS OR HER FAMILY. SUCH ORDER REGARDING  
55 A LOCAL SOCIAL SERVICES OFFICIAL SHALL NOT INCLUDE THE PROVISION OF ANY  
56 SERVICE OR ASSISTANCE TO THE RESPONDENT AND HIS OR HER FAMILY THAT IS

1 NOT AUTHORIZED OR REQUIRED TO BE MADE AVAILABLE PURSUANT TO THE COUNTY  
2 CHILD AND FAMILY SERVICES PLAN THEN IN EFFECT. IN ANY ORDER ISSUED  
3 PURSUANT TO THIS SECTION, THE COURT MAY REQUIRE THE OFFICIAL TO MAKE  
4 PERIODIC PROGRESS REPORTS TO THE COURT ON THE IMPLEMENTATION OF SUCH  
5 ORDER. VIOLATION OF SUCH ORDER SHALL BE SUBJECT TO PUNISHMENT PURSUANT  
6 TO SECTION SEVEN HUNDRED FIFTY-THREE OF THE JUDICIARY LAW.

7 (C) A COPY OF THE COURT'S ORDER AND THE ATTACHMENTS SHALL BE GIVEN TO  
8 THE RESPONDENT AND HIS OR HER ATTORNEY AND TO THE RESPONDENT'S PARENT OR  
9 PARENTS OR OTHER PERSON OR PERSONS LEGALLY RESPONSIBLE FOR THE RESPOND-  
10 ENT. THE ORDER SHALL ALSO CONTAIN A NOTICE THAT IF THE RESPONDENT  
11 REMAINS IN FOSTER CARE FOR FIFTEEN OF THE MOST RECENT TWENTY-TWO MONTHS,  
12 THE AGENCY WITH WHICH THE RESPONDENT IS PLACED MAY BE REQUIRED BY LAW TO  
13 FILE A PETITION TO TERMINATE THE PARENTAL RIGHTS OF THE PARENT OR  
14 PARENTS OF THE RESPONDENT.

15 S 6. Section 736 of the family court act is amended by adding a new  
16 subdivision 4 to read as follows:

17 (4) IN ANY PROCEEDING UNDER THIS ARTICLE, THE COURT SHALL CAUSE A COPY  
18 OF THE PETITION AND NOTICE OF THE TIME AND PLACE TO BE HEARD TO BE  
19 SERVED UPON ANY NON-CUSTODIAL PARENT OF THE RESPONDENT, PROVIDED THAT  
20 THE ADDRESS OF SUCH PARENT IS KNOWN TO OR IS ASCERTAINABLE BY THE COURT.  
21 SERVICE SHALL BE MADE BY ORDINARY FIRST CLASS MAIL AT SUCH PARENT'S LAST  
22 KNOWN RESIDENCE. THE FAILURE OF SUCH PARENT TO APPEAR SHALL NOT BE CAUSE  
23 FOR DELAY OF THE PROCEEDINGS.

24 S 7. Subdivision (a) of section 741 of the family court act, as  
25 amended by chapter 41 of the laws of 2010, is amended and a new subdivi-  
26 sion (d) is added to read as follows:

27 (a) At the initial appearance of a respondent in a proceeding and at  
28 the commencement of any hearing under this article, the respondent and  
29 his or her parent or other person legally responsible for his or her  
30 care shall be advised of the respondent's right to remain silent and of  
31 the respondent's right to be represented by counsel chosen by him or her  
32 or his or her parent or other person legally responsible for his or her  
33 care, or by an attorney assigned by the court under part four of article  
34 two OF THIS ACT. [Provided, however, that in] IN the event of the fail-  
35 ure of the respondent's parent or other person legally responsible for  
36 his or her care to appear, after reasonable and substantial effort has  
37 been made to notify such parent or responsible person of the commence-  
38 ment of the proceeding and such initial appearance, the court shall  
39 appoint an attorney for the respondent and shall, unless inappropriate,  
40 also appoint a guardian ad litem for such respondent, and in such event,  
41 shall inform the respondent of such rights in the presence of such  
42 attorney and any guardian ad litem.

43 (D) WHENEVER AN ATTORNEY HAS BEEN APPOINTED BY THE FAMILY COURT TO  
44 REPRESENT A RESPONDENT IN A PROCEEDING UNDER THIS ARTICLE PURSUANT TO  
45 SUBDIVISION (A) OF THIS SECTION, SUCH APPOINTMENT SHALL CONTINUE WITHOUT  
46 FURTHER COURT ORDER OR APPOINTMENT DURING AN ORDER OF DISPOSITION ISSUED  
47 BY THE COURT, AN ADJOURNMENT IN CONTEMPLATION OF DISMISSAL, OR ANY  
48 EXTENSION OR VIOLATION THEREOF, OR ANY PERMANENCY HEARING, OTHER  
49 POST-DISPOSITIONAL PROCEEDING OR APPEAL. ALL NOTICES AND REPORTS  
50 REQUIRED BY LAW SHALL BE PROVIDED TO SUCH ATTORNEY. SUCH APPOINTMENT  
51 SHALL CONTINUE UNLESS ANOTHER APPOINTMENT OF AN ATTORNEY HAS BEEN MADE  
52 BY THE COURT OR UNLESS SUCH ATTORNEY MAKES APPLICATION TO THE COURT TO  
53 BE RELIEVED OF HIS OR HER APPOINTMENT. UPON APPROVAL OF SUCH APPLICATION  
54 TO BE RELIEVED, THE COURT SHALL IMMEDIATELY APPOINT ANOTHER ATTORNEY TO  
55 WHOM ALL NOTICES AND REPORTS REQUIRED BY LAW SHALL BE PROVIDED. THE  
56 ATTORNEY SHALL BE ENTITLED TO COMPENSATION PURSUANT TO APPLICABLE

PROVISIONS OF LAW FOR SERVICES RENDERED UP TO AND INCLUDING DISPOSITION OF THE PETITION. THE ATTORNEY SHALL, BY SEPARATE APPLICATION, BE ENTITLED TO COMPENSATION FOR SERVICES RENDERED AFTER THE DISPOSITION OF THE PETITION. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT THE AUTHORITY OF THE COURT TO REMOVE AN ATTORNEY FROM HIS OR HER ASSIGNMENT.

S 8. Subdivision (a) of section 756 of the family court act is amended by adding two new paragraphs (iii) and (iv) to read as follows:

(III) THE LOCAL COMMISSIONER OF SOCIAL SERVICES OR THE RELATIVE OR SUITABLE PERSON WITH WHOM THE RESPONDENT HAS BEEN PLACED UNDER THIS SECTION SHALL SUBMIT A REPORT TO THE COURT, THE ATTORNEY FOR THE RESPONDENT AND THE PRESENTMENT AGENCY, IF ANY, NOT LATER THAN THIRTY DAYS PRIOR TO THE CONCLUSION OF THE PLACEMENT PERIOD; PROVIDED, HOWEVER, THAT WHERE THE LOCAL COMMISSIONER OF SOCIAL SERVICES OR THE RELATIVE OR SUITABLE PERSON WITH WHOM THE RESPONDENT HAS BEEN PLACED FILES A PETITION FOR AN EXTENSION OF THE PLACEMENT AND A PERMANENCY HEARING PURSUANT TO SECTION SEVEN HUNDRED FIFTY-SIX-A OF THIS PART, SUCH REPORT SHALL BE SUBMITTED NOT LATER THAN SIXTY DAYS PRIOR TO THE DATE ON WHICH THE PERMANENCY HEARING MUST BE HELD AND SHALL BE ANNEXED TO THE PETITION.

(IV) THE PERMANENCY HEARING REPORT SUBMITTED IN ACCORDANCE WITH PARAGRAPH (III) OF THIS SUBDIVISION SHALL CONFORM TO THE REQUIREMENTS OF SUBDIVISION (C) OF SECTION ONE THOUSAND EIGHTY-NINE OF THIS ACT AND SHALL CONTAIN RECOMMENDATIONS AND SUCH SUPPORTING DATA AS IS APPROPRIATE. THE PERMANENCY HEARING REPORT, AS WELL AS THE REPORT SUBMITTED NOT LATER THAN THIRTY DAYS PRIOR TO THE CONCLUSION OF THE PLACEMENT SHALL INCLUDE, BUT NOT BE LIMITED TO, A PLAN FOR THE RELEASE OF THE RESPONDENT TO THE CUSTODY OF HIS OR HER PARENT OR PARENTS OR OTHER PERSON OR PERSONS LEGALLY RESPONSIBLE FOR THE RESPONDENT'S CARE, OR (IF THE RESPONDENT HAS ATTAINED THE AGE OF SIXTEEN) TO ANOTHER PERMANENCY ALTERNATIVE AS PROVIDED IN PARAGRAPH (IV) OF SUBDIVISION (D) OF SECTION SEVEN HUNDRED FIFTY-SIX-A OF THIS PART. FOR PURPOSES OF THIS PARAGRAPH, "PLACEMENT AGENCY" SHALL REFER TO THE COMMISSIONER OF SOCIAL SERVICES OR AN AUTHORIZED AGENCY UNDER CONTRACT WITH THE COMMISSIONER OF THE LOCAL SOCIAL SERVICES DISTRICT WITH WHOM THE RESPONDENT HAS BEEN PLACED. THE RELEASE PLAN SHALL PROVIDE AS FOLLOWS:

(1) IF THE RESPONDENT IS SUBJECT TO ARTICLE SIXTY-FIVE OF THE EDUCATION LAW OR ELECTS TO PARTICIPATE IN AN EDUCATIONAL PROGRAM LEADING TO A HIGH SCHOOL DIPLOMA FOLLOWING RELEASE, SUCH PLAN SHALL INCLUDE, BUT NOT BE LIMITED TO, THE STEPS THAT THE PLACEMENT AGENCY HAS TAKEN AND WILL BE TAKING IN CONJUNCTION WITH THE LOCAL EDUCATION AGENCY TO ENSURE THE IMMEDIATE ENROLLMENT OF THE RESPONDENT IN AN APPROPRIATE SCHOOL OR EDUCATIONAL PROGRAM LEADING TO A HIGH SCHOOL DIPLOMA WITHIN FIVE BUSINESS DAYS OF RELEASE OR, IF SUCH RELEASE OCCURS DURING THE SUMMER RECESS, IMMEDIATELY UPON THE COMMENCEMENT OF THE NEXT SCHOOL TERM. THE PLACEMENT AGENCY SHALL ASCERTAIN THE SCHOOL CALENDAR FROM THE SCHOOL DISTRICT AND SHALL, TO THE EXTENT POSSIBLE, WORK WITH THE SCHOOL DISTRICT SO THAT THE TIMING OF RESPONDENT'S RELEASE FROM THE PROGRAM AND ENROLLMENT IN SCHOOL ARE MINIMALLY DISRUPTIVE FOR THE RESPONDENT AND FURTHER HIS OR HER BEST INTERESTS. NOT LESS THAN FOURTEEN DAYS PRIOR TO THE RESPONDENT'S RELEASE, THE PLACEMENT AGENCY SHALL NOTIFY THE SCHOOL DISTRICT WHERE THE RESPONDENT WILL BE ATTENDING SCHOOL AND TRANSFER ALL NECESSARY RECORDS, INCLUDING BUT NOT LIMITED TO, THE RESPONDENT'S COURSE OF STUDY, CREDITS EARNED AND ACADEMIC RECORD.

(2) IF THE PLACEMENT AGENCY HAS REASON TO BELIEVE THAT THE RESPONDENT MAY HAVE A DISABILITY OR IF THE RESPONDENT HAD BEEN FOUND ELIGIBLE TO RECEIVE SPECIAL EDUCATION SERVICES PRIOR TO OR DURING THE PLACEMENT, IN ACCORDANCE WITH ARTICLE EIGHTY-NINE OF THE EDUCATION LAW, SUCH PLAN

1 SHALL INCLUDE, BUT NOT BE LIMITED TO, THE STEPS THAT THE PLACEMENT AGEN-  
2 CY HAS TAKEN AND WILL BE TAKING TO ENSURE THAT THE LOCAL EDUCATION AGEN-  
3 CY MAKES ANY NECESSARY REFERRALS OR ARRANGES FOR SPECIAL EDUCATIONAL  
4 EVALUATIONS OR SERVICES, AS APPROPRIATE, AND PROVIDES NECESSARY RECORDS  
5 IMMEDIATELY IN ACCORDANCE WITH STATE AND FEDERAL LAW.

6 (3) IF THE RESPONDENT IS NOT SUBJECT TO ARTICLE SIXTY-FIVE OF THE  
7 EDUCATION LAW AND ELECTS NOT TO PARTICIPATE IN AN EDUCATIONAL PROGRAM  
8 LEADING TO A HIGH SCHOOL DIPLOMA, SUCH PLAN SHALL INCLUDE, BUT NOT BE  
9 LIMITED TO, THE STEPS THAT THE PLACEMENT AGENCY HAS TAKEN AND WILL BE  
10 TAKING TO ASSIST THE RESPONDENT TO BECOME GAINFULLY EMPLOYED OR TO BE  
11 ENROLLED IN A VOCATIONAL PROGRAM IMMEDIATELY UPON RELEASE.

12 S 9. Section 756 of the family court act is amended by adding a new  
13 subdivision (d) to read as follows:

14 (D)(I) WHERE THE RESPONDENT IS PLACED PURSUANT TO THIS SECTION, THE  
15 DISPOSITIONAL ORDER OR AN ATTACHMENT TO THE ORDER INCORPORATED BY REFER-  
16 ENCE INTO THE ORDER SHALL INCLUDE:

17 (1) A DESCRIPTION OF THE VISITATION PLAN, INCLUDING ANY PLANS FOR  
18 VISITS AND/OR CONTACT WITH THE RESPONDENT'S SIBLINGS;

19 (2) A SERVICE PLAN, IF AVAILABLE. IF THE SERVICE PLAN HAS NOT YET BEEN  
20 DEVELOPED, THEN THE SERVICE PLAN MUST BE FILED WITH THE COURT AND DELIV-  
21 ERED TO THE PRESENTMENT AGENCY, ATTORNEY FOR THE RESPONDENT AND PARENT  
22 OR PARENTS OR OTHER PERSON OR PERSONS LEGALLY RESPONSIBLE FOR THE CARE  
23 OF THE RESPONDENT NO LATER THAN NINETY DAYS FROM THE DATE THE DISPOSI-  
24 TION WAS MADE; AND

25 (3) A DIRECTION THAT THE PARENT OR PARENTS OR OTHER PERSON OR PERSONS  
26 LEGALLY RESPONSIBLE FOR CARE OF THE RESPONDENT SHALL BE NOTIFIED OF ANY  
27 PLANNING CONFERENCES TO BE HELD PURSUANT TO SUBDIVISION THREE OF SECTION  
28 FOUR HUNDRED NINE-E OF THE SOCIAL SERVICES LAW, OF THEIR RIGHT TO ATTEND  
29 THE CONFERENCES, AND OF THEIR RIGHT TO HAVE COUNSEL OR ANOTHER REPRESen-  
30 TATIVE OR COMPANION WITH THEM AND, FURTHER, THAT THE RESPONDENT, IF  
31 FOURTEEN YEARS OF AGE OR OLDER, BE INVOLVED IN THE DEVELOPMENT OF PLANS  
32 AS REQUIRED BY FEDERAL LAW.

33 (II) A COPY OF THE COURT'S ORDER AND ATTACHMENTS SHALL BE GIVEN TO THE  
34 RESPONDENT AND HIS OR HER ATTORNEY AND TO THE RESPONDENT'S PARENT OR  
35 PARENTS OR OTHER PERSON OR PERSONS LEGALLY RESPONSIBLE FOR THE CARE OF  
36 THE RESPONDENT. THE ORDER SHALL ALSO CONTAIN A NOTICE THAT IF THE  
37 RESPONDENT REMAINS IN PLACEMENT FOR FIFTEEN OF THE MOST RECENT  
38 TWENTY-TWO MONTHS, THE AGENCY WITH WHICH THE RESPONDENT IS PLACED MAY BE  
39 REQUIRED BY LAW TO FILE A PETITION TO TERMINATE THE PARENTAL RIGHTS OF  
40 THE PARENT OR PARENTS OF THE RESPONDENT.

41 S 10. Subdivision (a), subdivision (b) and the opening paragraph and  
42 paragraphs (iv) and (v) of subdivision (d) of section 756-a of the fami-  
43 ly court act, subdivision (a) as amended by chapter 309 of the laws of  
44 1996, subdivision (b) and the opening paragraph of subdivision (d) as  
45 amended by section 4 of part B of chapter 327 of the laws of 2007 and  
46 paragraphs (iv) and (v) of subdivision (d) as amended by section 23 of  
47 part L of chapter 56 of the laws of 2015, are amended and a new para-  
48 graph (vi) is added to subdivision (d) to read as follows:

49 (a) In any case in which the [child] RESPONDENT has been placed pursu-  
50 ant to section seven hundred fifty-six OF THIS PART, the [child]  
51 RESPONDENT, the person with whom the [child] RESPONDENT has been placed  
52 or the LOCAL commissioner of social services may petition the court to  
53 extend such placement. Such petition shall be filed at least sixty days  
54 prior to the expiration of the period of placement, except for good  
55 cause shown, but in no event shall such petition be filed after the  
56 original expiration date. THE PETITION SHALL BE ACCOMPANIED BY A



1 PERMANENCY REPORT THAT CONFORMS TO THE REQUIREMENTS OF PARAGRAPH (III)  
2 OF SUBDIVISION (A) OF SECTION SEVEN HUNDRED FIFTY-SIX OF THIS PART.

3 (b) The court shall conduct a permanency hearing concerning the need  
4 for continuing the placement. The child, the person with whom the child  
5 has been placed and the LOCAL commissioner of social services shall be  
6 notified of such hearing and shall have the right to be heard thereat.  
7 A COPY OF THE PETITION AND ACCOMPANYING PERMANENCY REPORT SHALL BE  
8 SERVED ON THE RESPONDENT'S ATTORNEY.

9 At the conclusion of the permanency hearing the court may, in its  
10 discretion, order an extension of the placement for not more than one  
11 year, WHICH MAY INCLUDE A PERIOD OF POST-RELEASE SUPERVISION AND AFTER-  
12 CARE, OR MAY DIRECT THAT THE RESPONDENT BE PLACED ON PROBATION FOR NOT  
13 MORE THAN ONE YEAR, PURSUANT TO SECTION SEVEN HUNDRED FIFTY-SEVEN OF  
14 THIS PART, OR MAY ORDER THAT THE PETITION FOR AN EXTENSION OF PLACEMENT  
15 BE DISMISSED. The court must consider and determine in its order:

16 (iv) whether and when the child: (A) will be returned to the parent;  
17 (B) should be placed for adoption with the social services official  
18 filing a petition for termination of parental rights; (C) should be  
19 referred for legal guardianship; (D) should be placed permanently with a  
20 fit and willing relative; or (E) should be placed in another planned  
21 permanent living arrangement with a significant connection to an adult  
22 willing to be a permanency resource for the child if the child is age  
23 sixteen or older and (1) the social services official has documented to  
24 the court: (I) intensive, ongoing, and, as of the date of the hearing,  
25 unsuccessful efforts made by the social services district to return the  
26 child home or secure a placement for the child with a fit and willing  
27 relative including adult siblings, a legal guardian, or an adoptive  
28 parent, including through efforts that utilize search technology includ-  
29 ing social media to find biological family members for children, (II)  
30 the steps the social services district is taking to ensure that (A) the  
31 child's foster family home or child care facility is following the  
32 reasonable and prudent parent standard in accordance with guidance  
33 provided by the United States department of health and human services,  
34 and (B) the child has regular, ongoing opportunities to engage in age or  
35 developmentally appropriate activities including by consulting with the  
36 child in an age-appropriate manner about the opportunities of the child  
37 to participate in activities; and (2) the social services district has  
38 documented to the court and the court has determined that there are  
39 compelling reasons for determining that it continues to not be in the  
40 best interest of the child to return home, be referred for termination  
41 of parental rights and placed for adoption, placed with a fit and will-  
42 ing relative, or placed with a legal guardian; and (3) the court has  
43 made a determination explaining why, as of the date of the hearing,  
44 another planned living arrangement with a significant connection to an  
45 adult willing to be a permanency resource for the child is the best  
46 permanency plan for the child; [and]

47 (v) where the child will not be returned home, consideration of appro-  
48 priate in-state and out-of-state placements[.]; AND

49 (VI) WITH REGARD TO THE PLACEMENT OR EXTENSION OF PLACEMENT ORDERED BY  
50 THE COURT PURSUANT TO SECTION SEVEN HUNDRED FIFTY-SIX OF THIS PART, THE  
51 STEPS THAT MUST BE TAKEN BY THE AGENCY WITH WHICH THE RESPONDENT IS  
52 PLACED TO IMPLEMENT THE PLAN FOR RELEASE SUBMITTED PURSUANT TO PARA-  
53 GRAPHS (III) AND (IV) OF SUBDIVISION (A) OF SUCH SECTION, THE ADEQUACY  
54 OF SUCH PLAN AND ANY MODIFICATIONS THAT SHOULD BE MADE TO SUCH PLAN.

1 S 11. Subdivisions (e) and (f) of section 756-a of the family court  
2 act are relettered subdivisions (f) and (g) and a new subdivision (e) is  
3 added to read as follows:

4 (E)(I) IF THE ORDER FROM THE PERMANENCY HEARING EXTENDS THE RESPOND-  
5 ENT'S PLACEMENT OR IF THE RESPONDENT CONTINUES IN PLACEMENT UNDER A  
6 PRIOR ORDER, THE ORDER OR AN ATTACHMENT TO THE ORDER INCORPORATED INTO  
7 THE ORDER BY REFERENCE SHALL INCLUDE:

8 (1) A DESCRIPTION OF THE VISITATION PLAN, INCLUDING ANY PLANS FOR  
9 VISITATION AND/OR CONTACT WITH THE RESPONDENT'S SIBLINGS;

10 (2) A SERVICE PLAN AIMED AT EFFECTUATING THE PERMANENCY GOAL; AND

11 (3) A DIRECTION THAT THE PARENT OR PARENTS OR OTHER PERSON OR PERSONS  
12 LEGALLY RESPONSIBLE FOR THE CARE OF THE RESPONDENT SHALL BE NOTIFIED OF  
13 ANY PLANNING CONFERENCES TO BE HELD PURSUANT TO SUBDIVISION THREE OF  
14 SECTION FOUR HUNDRED NINE-E OF THE SOCIAL SERVICES LAW, OF THEIR RIGHT  
15 TO ATTEND THE CONFERENCES AND OF THEIR RIGHT TO HAVE COUNSEL OR ANOTHER  
16 REPRESENTATIVE OR COMPANION WITH THEM.

17 (II) A COPY OF THE COURT'S ORDER AND THE SERVICE PLAN SHALL BE GIVEN  
18 TO THE RESPONDENT AND HIS OR HER ATTORNEY AND TO THE RESPONDENT'S PARENT  
19 OR PARENTS OR OTHER PERSON OR PERSONS LEGALLY RESPONSIBLE FOR THE CARE  
20 OF THE RESPONDENT. THE ORDER SHALL ALSO CONTAIN A NOTICE THAT IF THE  
21 RESPONDENT REMAINS IN FOSTER CARE FOR FIFTEEN OF THE MOST RECENT TWEN-  
22 TY-TWO MONTHS, THE AGENCY MAY BE REQUIRED BY LAW TO FILE A PETITION TO  
23 TERMINATE THE PARENTAL RIGHTS OF THE PARENT OR PARENTS OF THE RESPOND-  
24 ENT.

25 S 12. This act shall take effect on the ninetieth day after it shall  
26 have become a law; provided, however, that:

27 (a) the amendments to paragraph (c) of subdivision 7 of section 353.3  
28 of the family court act made by section four of this act shall take  
29 effect on the same date as section 16 of part L of chapter 56 of the  
30 laws of 2015 takes effect;

31 (b) the amendments to paragraph (d) of subdivision 7 of section 355.5  
32 of the family court act made by section five of this act shall take  
33 effect on the same date as section 18 of part L of chapter 56 of the  
34 laws of 2015 takes effect; and

35 (c) the amendments to paragraphs (iv) and (v) of subdivision (d) of  
36 section 756-a of the family court act made by section ten of this act  
37 shall take effect on the same date as section 23 of part L of chapter 56  
38 of the laws of 2015 takes effect.