

7221

I N S E N A T E

April 7, 2016

Introduced by Sen. AVELLA -- (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 domestic relations law, the family court act and the social services law, in relation to conditional surrenders of parental rights in family and surrogate's court

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

1 Section 1. Subdivisions 1 and 2 of section 112-b of the domestic
2 relations law, subdivision 1 as added by section 63 of part A of chapter
3 3 of the laws of 2005 and subdivision 2 as amended by chapter 41 of the
4 laws of 2010, are amended to read as follows:
5 1. Nothing in this section shall be construed to prohibit the parties
6 to a proceeding under this chapter from entering into an agreement
7 regarding communication with or contact between an adoptive child, adop-
8 tive parent or parents and a birth parent or parents and/or the adoptive
9 child's biological siblings or half-siblings, PROVIDED, HOWEVER, THAT
10 SUCH AN AGREEMENT SHALL NOT BE LEGALLY ENFORCEABLE UNLESS THE JUDICIAL
11 APPROVAL OF THE AGREEMENT HAS BEEN INCORPORATED INTO A WRITTEN ORDER
12 ENTERED BY THE COURT IN ACCORDANCE WITH SUBDIVISION TWO OF THIS SECTION.
13 2. Agreements regarding communication or contact between an adoptive
14 child, adoptive parent or parents, and a birth parent or parents and/or
15 biological siblings or half-siblings of an adoptive child shall not be
16 legally enforceable unless the terms of the agreement are incorporated
17 into a written court order entered in accordance with the provisions of
18 this section. AN AGREEMENT FOR CONTACT OR COMMUNICATION BETWEEN THE
19 CHILD AND HIS OR HER SIBLINGS OR HALF-SIBLINGS WHERE THE CHILD AND/OR
20 SIBLINGS OR HALF-SIBLINGS ARE FOURTEEN YEARS OF AGE OR OLDER SHALL NOT
21 BE ENFORCEABLE UNLESS SUCH CHILD AND SUCH SIBLING OR HALF-SIBLING
22 CONSENT TO THE AGREEMENT IN WRITING. The court shall not incorporate an
23 agreement regarding communication or contact into an order unless the
24 terms and conditions of the agreement have been set forth in writing and
25 consented to in writing by the parties to the agreement, including the
26 attorney representing the adoptive child. The court shall not enter a

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

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1 proposed order unless the court IN WHICH THE SURRENDER WAS EXECUTED OR
2 THE COURT that approved the surrender of the child determined and stated
3 in its order that the communication with or contact between the adoptive
4 child, the prospective adoptive parent or parents and a birth parent or
5 parents and/or biological siblings or half-siblings, as agreed upon and
6 as set forth in the agreement, would be in the adoptive child's best
7 interests. Notwithstanding any other provision of law, a copy of the
8 order entered pursuant to this section incorporating the post-adoption
9 contact agreement shall be given to all parties who have agreed to the
10 terms and conditions of such order.

11 WITH RESPECT TO SURRENDERS EXECUTED ON OR AFTER JANUARY FIRST, TWO
12 THOUSAND SEVENTEEN, AN AGREEMENT REGARDING COMMUNICATION OR CONTACT
13 FOLLOWING AN ADOPTION IS ONLY ENFORCEABLE IF APPROVAL OF THE AGREEMENT
14 HAS BEEN INCORPORATED INTO AN ORDER IN CONJUNCTION WITH A SURRENDER
15 EXECUTED BEFORE A JUDGE; PROVIDED, HOWEVER, THAT AN AGREEMENT REGARDING
16 COMMUNICATION OR CONTACT FOLLOWING AN ADOPTION OF A CHILD FROM AN
17 AUTHORIZED AGENCY MADE IN CONJUNCTION WITH AN EXTRA-JUDICIAL SURRENDER
18 MAY BE ENFORCEABLE IF THE FOLLOWING ADDITIONAL CONDITIONS HAVE BEEN MET:
19 (I) THE PARTY OR PARTIES SURRENDERING THE CHILD ATTEST IN A SWORN AFFI-
20 DAVIT THAT IT WOULD BE AN UNDUE HARDSHIP TO APPEAR IN COURT TO EXECUTE
21 THE SURRENDER; AND (II) THE PARTY OR PARTIES SURRENDERING THE CHILD WERE
22 REPRESENTED BY COUNSEL AND SUCH COUNSEL WAS PRESENT AT THE EXECUTION OF
23 THE SURRENDER AND INFORMED THE SURRENDERING PARTY OR PARTIES OF THE
24 REQUIREMENTS FOR ENFORCEABILITY OF THE POST-ADOPTION CONTACT AGREEMENT.

25 S 2. Paragraph (iv) of subdivision (a) of section 262 of the family
26 court act, as amended by chapter 3 of the laws of 2012, is amended to
27 read as follows:

28 (iv) the parent or person legally responsible, foster parent, or other
29 person having physical or legal custody of the child in any proceeding
30 under article ten or ten-A of this act or section three hundred fifty-
31 eight-a, three hundred EIGHTY-THREE-C, THREE HUNDRED eighty-four or
32 three hundred eighty-four-b of the social services law, and a non-custo-
33 dial parent or grandparent served with notice pursuant to paragraph (e)
34 of subdivision two of section three hundred eighty-four-a of the social
35 services law;

36 S 3. Paragraph (b) of subdivision 2 of section 383-c of the social
37 services law, as amended by chapter 41 of the laws of 2010, is amended
38 to read as follows:

39 (b) (I) If a surrender instrument designates a particular person or
40 persons who will adopt a child, such person or persons, the child's
41 birth parent or parents, the authorized agency having care and custody
42 of the child and the child's attorney[,] may enter into a written agree-
43 ment providing for communication or contact between the child and the
44 child's parent or parents on such terms and conditions as may be agreed
45 to by the parties. SUCH TERMS AND CONDITIONS SHALL BE SET FORTH IN WRIT-
46 ING AND CONSENTED TO IN WRITING BY THE PARTIES TO THE AGREEMENT, INCLUD-
47 ING THE ATTORNEY REPRESENTING THE CHILD.

48 (II) If a surrender instrument does not designate a particular person
49 or persons who will adopt the child, then the child's birth parent or
50 parents, the authorized agency having care and custody of the child and
51 the child's attorney may enter into a written agreement providing for
52 communication or contact, on such terms and conditions as may be agreed
53 to by the parties. SUCH TERMS AND CONDITIONS SHALL BE SET FORTH IN WRIT-
54 ING AND CONSENTED TO IN WRITING BY THE PARTIES TO THE AGREEMENT, INCLUD-
55 ING THE ATTORNEY REPRESENTING THE CHILD.

1 (III) Such agreement also may provide terms and conditions for commu-
2 nication with or contact between the child and the child's biological
3 siblings or half-siblings, if any. If any such sibling or half-sibling
4 is fourteen years of age or older, such terms and conditions shall not
5 be enforceable unless such sibling or half-sibling consents to the
6 agreement in writing.

7 (IV) If the court before which the surrender instrument is presented
8 for approval determines that the agreement concerning communication and
9 contact is in the child's best interests, the court shall approve the
10 agreement AND INCORPORATE SUCH APPROVAL INTO A WRITTEN COURT ORDER, A
11 COPY OF WHICH SHALL BE GIVEN TO THE PARTIES. If the court does not
12 approve the agreement, the court may nonetheless approve the surrender;
13 provided, however, that the birth parent or parents executing the
14 surrender instrument shall be INFORMED THAT THE AGREEMENT IS NOT
15 ENFORCEABLE IN A COURT OF LAW AND SHALL BE given the opportunity at that
16 time to withdraw such instrument.

17 (V) Enforcement of any agreement prior to the adoption of the child
18 shall be in accordance with subdivision (b) of section one thousand
19 fifty-five-a of the family court act. Subsequent to the adoption of the
20 child, enforcement of any agreement shall be in accordance with section
21 one hundred twelve-b of the domestic relations law.

22 S 4. Subdivision 4 of section 383-c of the social services law is
23 amended by adding a new paragraph (g) to read as follows:

24 (G) A SURRENDER OF A CHILD, EXECUTED ON OR AFTER JANUARY FIRST, TWO
25 THOUSAND SEVENTEEN, WHICH IS MADE IN CONJUNCTION WITH AN AGREEMENT
26 CONTAINING CONDITIONS, INCLUDING, BUT NOT LIMITED TO, IDENTIFYING THE
27 PROSPECTIVE ADOPTIVE PARENT OR PARENTS OR PRESCRIBING COMMUNICATION OR
28 CONTACT WITH THE CHILD AND THE ADOPTIVE PARENT OR PARENTS AND/OR BETWEEN
29 THE CHILD AND HIS OR HER BIOLOGICAL SIBLINGS OR HALF-SIBLINGS FOLLOWING
30 THE SURRENDER AND ADOPTION OF THE CHILD SHALL BE EXECUTED BEFORE A
31 JUDGE; PROVIDED, HOWEVER, THAT SUCH AN AGREEMENT MADE IN CONJUNCTION
32 WITH AN EXTRA-JUDICIAL SURRENDER EXECUTED AFTER SUCH DATE MAY BE
33 ENFORCEABLE IF THE FOLLOWING CONDITIONS HAVE BEEN MET IN ADDITION TO
34 THOSE DELINEATED IN PARAGRAPH (B) OF THIS SUBDIVISION: (I) THE PARTY OR
35 PARTIES SURRENDERING THE CHILD ATTEST IN A SWORN AFFIDAVIT THAT IT WOULD
36 BE AN UNDUE HARDSHIP TO APPEAR IN COURT TO EXECUTE THE SURRENDER; AND
37 (II) THE PARTY OR PARTIES SURRENDERING THE CHILD WERE REPRESENTED BY
38 COUNSEL AND SUCH COUNSEL WAS PRESENT AT THE EXECUTION OF THE SURRENDER
39 AND INFORMED THE SURRENDERING PARTY OR PARTIES OF THE REQUIREMENTS FOR
40 ENFORCEABILITY OF THE AGREEMENT.

41 S 5. Subparagraphs (ii) and (iii) of paragraph (b) of subdivision 5 of
42 section 383-c of the social services law, subparagraph (ii) as amended
43 by chapter 601 of the laws of 1994 and subparagraph (iii) as added by
44 chapter 479 of the laws of 1990, are amended to read as follows:

45 (ii) that the parent is giving up all rights to have custody, visit
46 with, speak with, write to or learn about the child, forever, unless the
47 parties have agreed to different terms pursuant to subdivision two of
48 this section[,] and unless such terms are written in the surrender OR
49 ARE WRITTEN IN AN AGREEMENT APPROVED BY THE COURT IN AN ORDER IN ACCORD-
50 ANCE WITH SUCH SUBDIVISION, or, if the parent registers with the
51 adoption information register, as specified in section forty-one hundred
52 thirty-eight-d of the public health law, that the parent may be
53 contacted at anytime after the child reaches the age of eighteen years,
54 but only if both the parent and the adult child so choose;

55 (iii) that the child will be adopted without the parent's consent and
56 without further notice to the parent, and will be adopted by any person

1 that the agency chooses, unless the surrender paper OR AN AGREEMENT
2 APPROVED BY THE COURT IN AN ORDER IN ACCORDANCE WITH SUBDIVISION TWO OF
3 THIS SECTION contains the name of the person or persons who will be
4 adopting the child; and

5 S 6. Paragraph (b) of subdivision 2 of section 384 of the social
6 services law, as amended by chapter 41 of the laws of 2010, is amended
7 to read as follows:

8 (b) (I) If a surrender instrument designates a particular person or
9 persons who will adopt a child, such person or persons, the child's
10 birth parent or parents, the authorized agency having care and custody
11 of the child and the child's attorney[,] may enter into a written agree-
12 ment providing for communication or contact between the child and the
13 child's parent or parents on such terms and conditions as may be agreed
14 to by the parties. SUCH TERMS AND CONDITIONS SHALL BE SET FORTH IN WRIT-
15 ING AND CONSENTED TO IN WRITING BY THE PARTIES TO THE AGREEMENT, INCLUD-
16 ING THE ATTORNEY REPRESENTING THE CHILD.

17 (II) If a surrender instrument does not designate a particular person
18 or persons who will adopt the child, then the child's birth parent or
19 parents, the authorized agency having care and custody of the child and
20 the child's attorney may enter into a written agreement providing for
21 communication or contact, on such terms and conditions as may be agreed
22 to by the parties. SUCH TERMS AND CONDITIONS SHALL BE SET FORTH IN WRIT-
23 ING AND CONSENTED TO IN WRITING BY THE PARTIES TO THE AGREEMENT, INCLUD-
24 ING THE ATTORNEY REPRESENTING THE CHILD.

25 (III) Such agreement also may provide terms and conditions for commu-
26 nication with or contact between the child and the child's biological
27 sibling or half-sibling, if any. If THE CHILD OR any such sibling or
28 half-sibling is fourteen years of age or older, [such terms and condi-
29 tions] AN AGREEMENT FOR CONTACT OR COMMUNICATION BETWEEN THE CHILD AND
30 HIS OR HER SIBLINGS OR HALF-SIBLINGS shall not be enforceable unless
31 such CHILD, sibling or half-sibling consents to the agreement in writ-
32 ing.

33 (IV) If the court before which the surrender instrument is presented
34 for EXECUTION OR approval, determines that the agreement [concerning
35 communication and contact] is in the child's best interests, the court
36 shall approve the agreement AND INCORPORATE SUCH APPROVAL INTO A WRITTEN
37 COURT ORDER, A COPY OF WHICH SHALL BE GIVEN TO THE PARTIES. If the court
38 does not approve the agreement, the court may nonetheless approve the
39 surrender; provided, however, that the birth parent or parents executing
40 the surrender instrument shall be INFORMED THAT THE AGREEMENT IS NOT
41 ENFORCEABLE IN A COURT OF LAW AND SHALL BE given the opportunity at that
42 time to withdraw such instrument. Enforcement of any agreement prior to
43 the adoption of the child shall be in accordance with subdivision (b) of
44 section one thousand fifty-five-a of the family court act. Subsequent to
45 the adoption of the child, enforcement of any agreement shall be in
46 accordance with section one hundred twelve-b of the domestic relations
47 law.

48 S 7. Subdivision 3 of section 384 of the social services law, as
49 amended by chapter 479 of the laws of 1990, the opening paragraph as
50 amended by chapter 185 of the laws of 2006, the fifth undesignated para-
51 graph as added by chapter 680 of the laws of 2007, the sixth undesign-
52 ated paragraph and the closing paragraph as added by chapter 76 of the
53 laws of 2002, and subparagraphs (i) and (ii) of the sixth undesignated
54 paragraph as amended by chapter 41 of the laws of 2010, is amended to
55 read as follows:

1 3. Instrument AND INTERVENTION. (A) The instrument herein provided
2 shall be executed and acknowledged [(a)] (I) before any judge or surro-
3 gate in this state having jurisdiction over adoption proceedings, except
4 that if the child is being surrendered as a result of, or in connection
5 with, a proceeding before the family court pursuant to article ten or
6 ten-A of the family court act, the instrument shall be executed and
7 acknowledged in the family court that exercised jurisdiction over such
8 proceeding and shall be assigned, wherever practicable, to the judge who
9 last presided over such proceeding; or [(b)] (II) in the presence of one
10 or more witnesses and acknowledged by such witness or witnesses, in the
11 latter case before a notary public or other officer authorized to take
12 proof of deeds, and shall be recorded in the office of the county clerk
13 in the county where such instrument is executed, or where the principal
14 office of such authorized agency is located, in a book which such county
15 clerk shall provide and shall keep under seal.

16 (B) A SURRENDER OF A CHILD, EXECUTED ON OR AFTER JANUARY FIRST, TWO
17 THOUSAND SEVENTEEN, WHICH IS MADE IN CONJUNCTION WITH AN AGREEMENT
18 CONTAINING CONDITIONS, INCLUDING, BUT NOT LIMITED TO, IDENTIFYING THE
19 PROSPECTIVE ADOPTIVE PARENT OR PARENTS OR PRESCRIBING COMMUNICATION OR
20 CONTACT WITH THE CHILD AND THE ADOPTIVE PARENT OR PARENTS AND/OR BETWEEN
21 THE CHILD AND HIS OR HER BIOLOGICAL SIBLINGS OR HALF-SIBLINGS FOLLOWING
22 THE SURRENDER AND ADOPTION OF THE CHILD SHALL BE EXECUTED BEFORE A
23 JUDGE; PROVIDED, HOWEVER, THAT SUCH AN AGREEMENT MADE IN CONJUNCTION
24 WITH AN EXTRA-JUDICIAL SURRENDER EXECUTED AFTER SUCH DATE MAY BE
25 ENFORCEABLE IF THE FOLLOWING CONDITIONS HAVE BEEN MET IN ADDITION TO
26 THOSE DELINEATED IN PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION:

27 (I) THE PARTY OR PARTIES SURRENDERING THE CHILD ATTEST IN A SWORN
28 AFFIDAVIT THAT IT WOULD BE AN UNDUE HARDSHIP TO APPEAR IN COURT TO
29 EXECUTE THE SURRENDER; AND

30 (II) THE PARTY OR PARTIES SURRENDERING THE CHILD WERE REPRESENTED BY
31 COUNSEL AND SUCH COUNSEL WAS PRESENT AT THE EXECUTION OF THE SURRENDER
32 AND INFORMED THE SURRENDERING PARTY OR PARTIES OF THE REQUIREMENTS FOR
33 ENFORCEABILITY OF THE AGREEMENT.

34 (C) Such record shall be subject to inspection and examination only as
35 provided in subdivisions three and four of section three hundred seven-
36 ty-two of this title.

37 (D) Notwithstanding any other provision of law, if the parent surren-
38 dering the child for adoption is in foster care the instrument shall be
39 executed before a judge of the family court.

40 (E) Whenever the term surrender or surrender instrument is used in any
41 law relating to the adoption of children who are not in foster care, it
42 shall mean and refer exclusively to the instrument [hereinabove]
43 described IN THIS SUBDIVISION for the commitment of the guardianship of
44 the person and the custody of a child to an authorized agency by his OR
45 HER parents, parent or guardian; and in no case shall it be deemed to
46 apply to any instrument purporting to commit the guardianship of the
47 person and the custody of a child to any person other than an authorized
48 agency, nor shall such term or the provisions of this section be deemed
49 to apply to any instrument transferring the care and custody of a child
50 to an authorized agency pursuant to section three hundred eighty-four-a
51 of this [chapter] TITLE.

52 (F)(I) Any person or persons having custody of a child for the purpose
53 of adoption through an authorized agency shall be permitted as a matter
54 of right, as an interested party, to intervene in any proceeding
55 commenced to set aside a surrender purporting to commit a guardianship
56 of the person or custody of a child executed under the provisions of

1 this section. Such intervention may be made anonymously or in the true
2 name of said person.

3 (II) Any person or persons having custody for more than twelve months
4 through an authorized agency for the purpose of foster care shall be
5 permitted as a matter of right, as an interested party, to intervene in
6 any proceeding commenced to set aside a surrender purporting to commit
7 the guardianship of the person and custody of a child executed under the
8 provisions of this section. Such intervention may be made anonymously or
9 in the true name of said person or persons having custody of the child
10 for the purpose of foster care.

11 (G) A copy of such surrender shall be given to [such] THE surrendering
12 parent upon the execution thereof. The surrender shall include the
13 following statement: "I, (name of surrendering parent), this ____ day of
14 _____, _____, have received a copy of this surrender. (Signature of
15 surrendering parent)". Such surrendering parent shall so acknowledge the
16 delivery and the date of the delivery in writing on the surrender.

17 (H) Where the parties have agreed that the surrender shall be subject
18 to conditions pursuant to subdivision two of this section, the instru-
19 ment shall further state in plain language that:

20 (i) the authorized agency shall notify the parent, unless such notice
21 is expressly waived by a statement written by the parent and appended to
22 or included in such instrument, the attorney for the child and the court
23 that approved the surrender within twenty days of any substantial fail-
24 ure of a material condition of the surrender prior to the finalization
25 of the adoption of the child; and

26 (ii) except for good cause shown, the authorized agency shall file a
27 petition on notice to the parent unless notice is expressly waived by a
28 statement written by the parent and appended to or included in such
29 instrument and the child's attorney in accordance with section one thou-
30 sand fifty-five-a of the family court act within thirty days of such
31 failure, in order for the court to review such failure and, where neces-
32 sary, to hold a hearing; provided, however, that, in the absence of such
33 filing, the parent and/or attorney for the child may file such a peti-
34 tion at any time up to sixty days after notification of such failure.
35 Such petition filed by a parent or attorney for the child must be filed
36 prior to the child's adoption; and

37 (iii) the parent is obligated to provide the authorized agency with a
38 designated mailing address, as well as any subsequent changes in such
39 address, at which the parent may receive notices regarding any substan-
40 tial failure of a material condition, unless such notification is
41 expressly waived by a statement written by the parent and appended to or
42 included in such instrument.

43 Nothing in this paragraph shall limit the notice on the instrument
44 with respect to a failure to comply with a material condition of a
45 surrender subsequent to the finalization of the adoption of the child.

46 S 8. Subdivision 4 of section 384 of the social services law, as
47 amended by chapter 185 of the laws of 2006, is amended to read as
48 follows:

49 4. Upon petition by an authorized agency, a judge of the family court,
50 or a surrogate, may approve such surrender, on such notice to such
51 persons as the surrogate or judge may in his or her discretion
52 prescribe. If the child is being surrendered as a result of, or in
53 connection with, a proceeding before the family court pursuant to arti-
54 cle ten or ten-A of the family court act, the petition shall be filed in
55 the family court that exercised jurisdiction over such proceeding and
56 shall be assigned, wherever practicable, to the judge who last presided

1 over such proceeding. The petition shall set forth the names and last
2 known addresses of all persons required to be given notice of the
3 proceeding, pursuant to section three hundred eighty-four-c of this
4 title, and there shall be shown by the petition or by affidavit or other
5 proof satisfactory to the court that there are no persons other than
6 those set forth in the petition who are entitled to notice pursuant to
7 such section. AT THE TIME THAT A PARENT APPEARS BEFORE A JUDGE OR SURRO-
8 GATE TO EXECUTE AND ACKNOWLEDGE A SURRENDER OR FOR THE JUDGE TO APPROVE
9 A SURRENDER, THE JUDGE OR SURROGATE SHALL INFORM SUCH PARENT OF THE
10 RIGHT TO BE REPRESENTED BY LEGAL COUNSEL OF THE PARENT'S OWN CHOOSING
11 AND OF THE RIGHT TO OBTAIN SUPPORTIVE COUNSELING AND OF ANY RIGHT TO
12 HAVE COUNSEL ASSIGNED PURSUANT TO SECTION TWO HUNDRED SIXTY-TWO OF THE
13 FAMILY COURT ACT, SECTION FOUR HUNDRED SEVEN OF THE SURROGATE'S COURT
14 PROCEDURE ACT, OR SECTION THIRTY-FIVE OF THE JUDICIARY LAW. No person
15 who has received such notice and been afforded an opportunity to be
16 heard may challenge the validity of a surrender approved pursuant to
17 this subdivision in any other proceeding. However, this subdivision
18 shall not be deemed to require approval of a surrender by a surrogate or
19 judge for such surrender to be valid, PROVIDED, HOWEVER, THAT AN AGREE-
20 MENT MADE IN CONJUNCTION WITH A SURRENDER THAT CONTAINS CONDITIONS,
21 INCLUDING, BUT NOT LIMITED TO, IDENTIFYING THE PROSPECTIVE ADOPTIVE
22 PARENT OR PARENTS OR PRESCRIBING COMMUNICATION OR CONTACT WITH THE CHILD
23 AND THE ADOPTIVE PARENT OR PARENTS AND/OR BETWEEN THE CHILD AND HIS OR
24 HER BIOLOGICAL SIBLINGS OR HALF-SIBLINGS FOLLOWING THE SURRENDER AND
25 ADOPTION OF THE CHILD SHALL BE ENFORCEABLE IN A COURT OF LAW ONLY IF THE
26 REQUIREMENTS OF SUBDIVISIONS TWO AND THREE OF THIS SECTION HAVE BEEN
27 MET.

28 S 9. This act shall take effect on the first of January next succeed-
29 ing the date on which it shall have become a law.