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I N S E N A T E

May 12, 2016

Introduced by Sen. AVELLA -- 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 and the social services law, in relation to the liability for abuse of a child by a person legally responsible for such child

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

1 Section 1. Subdivision (j) of section 1012 of the family court act, as
2 amended by section 3 of part B of chapter 3 of the laws of 2005, is
3 amended to read as follows:
4 (j) "Aggravated circumstances" means where a child has been either
5 severely or repeatedly abused, as defined AND PROVIDED FOR in subdivi-
6 sion eight of section three hundred eighty-four-b of the social services
7 law, BY A PARENT OR BY A PERSON LEGALLY RESPONSIBLE FOR SUCH CHILD OR
8 ANOTHER CHILD; or where a child has subsequently been found to be an
9 abused child, as defined in paragraph (i) or (iii) of subdivision (e) of
10 this section, within five years after return home following placement in
11 foster care as a result of being found to be a neglected child, as
12 defined in subdivision (f) of this section, provided that the respondent
13 or respondents, BEING EITHER THE CHILD'S PARENT OR A PERSON LEGALLY
14 RESPONSIBLE FOR SUCH CHILD OR ANOTHER CHILD, in each of the foregoing
15 proceedings was the same; or where the court finds by clear and convinc-
16 ing evidence that the parent of a child in foster care has refused and
17 has failed completely, over a period of at least six months from the
18 date of removal, to engage in services necessary to eliminate the risk
19 of abuse or neglect if returned to the parent, and has failed to secure
20 services on his or her own or otherwise adequately prepare for the
21 return home and, after being informed by the court that such an admis-
22 sion could eliminate the requirement that the local department of social
23 services provide reunification services to the parent, the parent has
24 stated in court under oath that he or she intends to continue to refuse
25 such necessary services and is unwilling to secure such services inde-
26 pendently or otherwise prepare for the child's return home; provided,
27 however, that if the court finds that adequate justification exists for

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

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1 the failure to engage in or secure such services, including but not
2 limited to a lack of child care, a lack of transportation, and an
3 inability to attend services that conflict with the parent's work sched-
4 ule, such failure shall not constitute an aggravated circumstance; or
5 where a court has determined a child five days old or younger was aban-
6 doned by a parent with an intent to wholly abandon such child and with
7 the intent that the child be safe from physical injury and cared for in
8 an appropriate manner.

9 S 2. Paragraph (i) of subdivision (a) of section 1046 of the family
10 court act, as added by chapter 962 of the laws of 1970, is amended to
11 read as follows:

12 (i) proof of the AGGRAVATED CIRCUMSTANCES, abuse or neglect of one
13 child shall be admissible evidence on the issue of the AGGRAVATED
14 CIRCUMSTANCES, abuse or neglect of any other child of, or the legal
15 responsibility of, the respondent; and

16 S 3. Paragraph (e) of subdivision 4 of section 384-b of the social
17 services law, as amended by section 56 of part A of chapter 3 of the
18 laws of 2005, is amended to read as follows:

19 (e) The parent or parents, whose consent to the adoption of the child
20 would otherwise be required in accordance with section one hundred elev-
21 en of the domestic relations law, severely or repeatedly abused such
22 child OR ANY CHILD FOR WHOM SUCH PARENT IS OR HAS BEEN A PERSON LEGALLY
23 RESPONSIBLE, AS DEFINED IN SUBDIVISION (G) OF SECTION ONE THOUSAND
24 TWELVE OF THE FAMILY COURT ACT. Where a court has determined that
25 reasonable efforts to reunite the child with his or her parent are not
26 required, pursuant to the family court act or this chapter, OR WHERE THE
27 CHILD WAS SEVERELY OR REPEATEDLY ABUSED IS NOT THE CHILD OF THE RESPOND-
28 ENT IN THE TERMINATION PROCEEDING, a petition to terminate parental
29 rights on the ground of severe abuse as set forth in subparagraph (iii)
30 of paragraph (a) of subdivision eight of this section may be filed imme-
31 diately upon such determination.

32 S 4. Subdivision 8 of section 384-b of the social services law, as
33 amended by chapter 7 of the laws of 1999, subparagraph (ii) of paragraph
34 (a) and subparagraph (i) of paragraph (b) as amended by chapter 430 of
35 the laws of 2013, clause (A) of subparagraph (iii) of paragraph (a) as
36 amended by chapter 460 of the laws of 2006, paragraph (f) as amended by
37 section 58 of part A of chapter 3 of the laws of 2005, is amended to
38 read as follows:

39 8. (a) For the purposes of this section a child is "severely abused"
40 by his or her parent OR BY A RESPONDENT WHO IS OR WAS A PERSON LEGALLY
41 RESPONSIBLE, AS DEFINED IN SUBDIVISION (G) OF SECTION ONE THOUSAND
42 TWELVE OF THE FAMILY COURT ACT, FOR A CHILD, if (i) the child has been
43 found to be an abused child as a result of reckless or intentional acts
44 of the parent OR SUCH PERSON committed under circumstances evincing a
45 depraved indifference to human life, which result in serious physical
46 injury to the child as defined in subdivision ten of section 10.00 of
47 the penal law; or

48 (ii) the child has been found to be an abused child, as defined in
49 paragraph (iii) of subdivision (e) of section ten hundred twelve of the
50 family court act, as a result of such parent's OR PERSON LEGALLY RESPON-
51 SIBLE'S acts; provided, however, the respondent must have committed or
52 knowingly allowed to be committed a felony sex offense as defined in
53 sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67,
54 130.70, 130.75, 130.80, 130.95 and 130.96 of the penal law and, for the
55 purposes of this section the corroboration requirements contained in the
56 penal law shall not apply to proceedings under this section; or

1 (iii) (A) the parent of such child OR A PERSON LEGALLY RESPONSIBLE, AS
2 DEFINED IN SUBDIVISION (G) OF SECTION ONE THOUSAND TWELVE OF THE FAMILY
3 COURT ACT, has been convicted of murder in the first degree as defined
4 in section 125.27, murder in the second degree as defined in section
5 125.25, manslaughter in the first degree as defined in section 125.20,
6 or manslaughter in the second degree as defined in section 125.15, and
7 the victim of any such crime was another child of the parent or another
8 child for whose care such parent is or has been legally responsible as
9 defined in subdivision (g) of section one thousand twelve of the family
10 court act, or another parent of the child, unless the convicted parent
11 was a victim of physical, sexual or psychological abuse by the decedent
12 parent and such abuse was a factor in causing the homicide; or has been
13 convicted of an attempt to commit any of the foregoing crimes, and the
14 victim or intended victim was the child or another child of the parent
15 or another child for whose care such parent is or has been legally
16 responsible as defined in subdivision (g) of section one thousand twelve
17 of the family court act, or another parent of the child, unless the
18 convicted parent was a victim of physical, sexual or psychological abuse
19 by the decedent parent and such abuse was a factor in causing the
20 attempted homicide; (B) the parent of such child has been convicted of
21 criminal solicitation as defined in article one hundred, conspiracy as
22 defined in article one hundred five or criminal facilitation as defined
23 in article one hundred fifteen of the penal law for conspiring, solicit-
24 ing or facilitating any of the foregoing crimes, and the victim or
25 intended victim was the child or another child of the parent or another
26 child for whose care such parent is or has been legally responsible; (C)
27 the parent of such child has been convicted of assault in the second
28 degree as defined in section 120.05, assault in the first degree as
29 defined in section 120.10 or aggravated assault upon a person less than
30 eleven years old as defined in section 120.12 of the penal law, and the
31 victim of any such crime was the child or another child of the parent or
32 another child for whose care such parent is or has been legally respon-
33 sible; or has been convicted of an attempt to commit any of the forego-
34 ing crimes, and the victim or intended victim was the child or another
35 child of the parent or another child for whose care such parent is or
36 has been legally responsible; or (D) the parent of such child has been
37 convicted under the law in any other jurisdiction of an offense which
38 includes all of the essential elements of any crime specified in clause
39 (A), (B) or (C) of this subparagraph; and

40 (iv) IN THE CASE WHERE THE CHILD, WHO IS THE SUBJECT OF THE PETITION,
41 IS IN FOSTER CARE, the agency has made diligent efforts to encourage and
42 strengthen the parental relationship, including efforts to rehabilitate
43 the respondent, when such efforts will not be detrimental to the best
44 interests of the child, and such efforts have been unsuccessful and are
45 unlikely to be successful in the foreseeable future. Where a court has
46 previously determined in accordance with this chapter or the family
47 court act that reasonable efforts to make it possible for the child to
48 return safely to his or her home are not required, the agency shall not
49 be required to demonstrate diligent efforts as set forth in this
50 section.

51 (b) For the purposes of this section a child is "repeatedly abused" by
52 his or her parent OR BY A RESPONDENT WHO IS OR WAS A PERSON LEGALLY
53 RESPONSIBLE AS DEFINED IN SUBDIVISION (G) OF SECTION ONE THOUSAND TWELVE
54 OF THE FAMILY COURT ACT, FOR A CHILD, if:

55 (i) the child has been found to be an abused child, (A) as defined in
56 paragraph (i) of subdivision (e) of section ten hundred twelve of the

1 family court act, as a result of such parent's OR PERSON LEGALLY RESPON-
2 SIBLE'S acts; or (B) as defined in paragraph (iii) of subdivision (e) of
3 section ten hundred twelve of the family court act, as a result of such
4 parent's acts; provided, however, the respondent must have committed or
5 knowingly allowed to be committed a felony sex offense as defined in
6 sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67,
7 130.70, 130.75, 130.80, 130.95 and 130.96 of the penal law; and

8 (ii) (A) the child or another child for whose care such parent is or
9 has been legally responsible has been previously found, within the five
10 years immediately preceding the initiation of the proceeding in which
11 such abuse is found, to be an abused child, as defined in paragraph (i)
12 or (iii) of subdivision (e) of section ten hundred twelve of the family
13 court act, as a result of such parent's acts; provided, however, in the
14 case of a finding of abuse as defined in paragraph (iii) of subdivision
15 (e) of section ten hundred twelve of the family court act the respondent
16 must have committed or knowingly allowed to be committed a felony sex
17 offense as defined in sections 130.25, 130.30, 130.35, 130.40, 130.45,
18 130.50, 130.65, 130.67, 130.70, 130.75 and 130.80 of the penal law, or
19 (B) the parent has been convicted of a crime under section 130.25,
20 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70, 130.75
21 or 130.80 of the penal law against the child, a sibling of the child or
22 another child for whose care such parent is or has been legally respon-
23 sible, within the five year period immediately preceding the initiation
24 of the proceeding in which abuse is found; and

25 (iii) the agency has made diligent efforts, to encourage and strength-
26 en the parental relationship, IF THE RESPONDENT IS THE CHILD'S PARENT,
27 including efforts to rehabilitate the respondent, when such efforts will
28 not be detrimental to the best interests of the child, and such efforts
29 have been unsuccessful and are unlikely to be successful in the foresee-
30 able future. Where a court has previously determined in accordance with
31 this chapter or the family court act that reasonable efforts to make it
32 possible for the child to return safely to his or her home are not
33 required, the agency shall not be required to demonstrate diligent
34 efforts as set forth in this section.

35 (c) Notwithstanding any other provision of law, the requirements of
36 paragraph (g) of subdivision three of this section shall be satisfied if
37 one of the findings of abuse pursuant to subparagraph (i) or (ii) of
38 paragraph (b) of this subdivision is found to be based on clear and
39 convincing evidence.

40 (d) A determination by the court in accordance with article ten of the
41 family court act based upon clear and convincing evidence that the child
42 was a severely abused child as defined in subparagraphs (i) and (ii) of
43 paragraph (a) of this subdivision shall establish that the child was a
44 severely abused child in accordance with this section. Such a determi-
45 nation by the court in accordance with article ten of the family court
46 act based upon a fair preponderance of evidence shall be admissible in
47 any proceeding commenced in accordance with this section.

48 (e) A determination by the court in accordance with article ten of the
49 family court act based upon clear and convincing evidence that a child
50 was abused (A) as defined in paragraph (i) of subdivision (e) of section
51 ten hundred twelve of the family court act, as a result of such parent's
52 acts; or (B) as defined in paragraph (iii) of subdivision (e) of section
53 ten hundred twelve of the family court act, as a result of such parent's
54 acts; provided, however, the respondent must have committed or knowingly
55 allowed to be committed a felony sex offense as defined in sections
56 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70,

1 130.75 and 130.80 of the penal law shall establish that the child was an
2 abused child for the purpose of a determination as required by subpara-
3 graph (i) or (ii) of paragraph (b) of this subdivision. Such a determi-
4 nation by the court in accordance with article ten of the family court
5 act based upon a fair preponderance of evidence shall be admissible in
6 any proceeding commenced in accordance with this section.

7 (f) Upon a finding pursuant to paragraph (a) or (b) of this subdivi-
8 sion that the child has been severely or repeatedly abused by his or her
9 parent OR BY A PERSON LEGALLY RESPONSIBLE, AS DEFINED BY SUBDIVISION (G)
10 OF SECTION ONE THOUSAND TWELVE OF THE FAMILY COURT ACT, FOR A CHILD, the
11 court shall enter an order of disposition either (i) committing the
12 guardianship and custody of the child OR ANY CHILD OF SUCH PARENT,
13 pursuant to this section, or (ii) suspending judgment in accordance with
14 section six hundred thirty-three of the family court act, upon a further
15 finding, based on clear and convincing, competent, material and relevant
16 evidence introduced in a dispositional hearing, that the best interests
17 of the child require such commitment or suspension of judgment, OR (III)
18 TERMINATING THE RIGHTS OF ONE PARENT WHERE THE CHILD WILL BE IN THE
19 CUSTODY OF ANOTHER PARENT, A RELATIVE OR THE LOCAL COMMISSIONER OF
20 SOCIAL SERVICES. Where the disposition ordered is the commitment of
21 guardianship and custody pursuant to this section, an initial freed
22 child permanency hearing shall be completed pursuant to section one
23 thousand eighty-nine of the family court act.

24 (G) A PETITION FILED PURSUANT TO THIS SUBDIVISION MAY ALSO BE FILED
25 WHERE A CHILD IS THE CHILD OF A RESPONDENT WHO SEVERELY ABUSED OR
26 REPEATEDLY ABUSED A CHILD FOR WHOM HE OR SHE WAS A PERSON LEGALLY
27 RESPONSIBLE, AS DEFINED IN SUBDIVISION (G) OF SECTION ONE THOUSAND
28 TWELVE OF THE FAMILY COURT ACT.

29 (H) A PETITION MAY BE FILED PURSUANT TO THIS SUBDIVISION WHEN THE
30 SEVERELY OR REPEATEDLY ABUSED CHILD IS NOT IN FOSTER CARE AND/OR WHEN
31 ONLY ONE OF SUCH CHILD'S PARENTS IS A RESPONDENT.

32 S 5. This act shall take effect on the ninetieth day after it shall
33 have become a law.