

STATE OF NEW YORK

1690

2017-2018 Regular Sessions

IN SENATE

January 10, 2017

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

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

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1 such necessary services and is unwilling to secure such services inde-
2 pendently or otherwise prepare for the child's return home; provided,
3 however, that if the court finds that adequate justification exists for
4 the failure to engage in or secure such services, including but not
5 limited to a lack of child care, a lack of transportation, and an
6 inability to attend services that conflict with the parent's work sched-
7 ule, such failure shall not constitute an aggravated circumstance; or
8 where a court has determined a child five days old or younger was aban-
9 doned by a parent with an intent to wholly abandon such child and with
10 the intent that the child be safe from physical injury and cared for in
11 an appropriate manner.

12 § 2. Paragraph (i) of subdivision (a) of section 1046 of the family
13 court act, as added by chapter 962 of the laws of 1970, is amended to
14 read as follows:

15 (i) proof of the aggravated circumstances, abuse or neglect of one
16 child shall be admissible evidence on the issue of the aggravated
17 circumstances, abuse or neglect of any other child of, or the legal
18 responsibility of, the respondent; and

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

22 (e) The parent or parents, whose consent to the adoption of the child
23 would otherwise be required in accordance with section one hundred elev-
24 en of the domestic relations law, severely or repeatedly abused such
25 child or any child for whom such parent is or has been a person legally
26 responsible, as defined in subdivision (g) of section one thousand
27 twelve of the family court act. Where a court has determined that
28 reasonable efforts to reunite the child with his or her parent are not
29 required, pursuant to the family court act or this chapter, or where the
30 child was severely or repeatedly abused is not the child of the respond-
31 ent in the termination proceeding, a petition to terminate parental
32 rights on the ground of severe abuse as set forth in subparagraph (iii)
33 of paragraph (a) of subdivision eight of this section may be filed imme-
34 diately upon such determination.

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

42 8. (a) For the purposes of this section a child is "severely abused"
43 by his or her parent or by a respondent who is or was a person legally
44 responsible, as defined in subdivision (g) of section one thousand
45 twelve of the family court act, for a child, if (i) the child has been
46 found to be an abused child as a result of reckless or intentional acts
47 of the parent or such person committed under circumstances evincing a
48 depraved indifference to human life, which result in serious physical
49 injury to the child as defined in subdivision ten of section 10.00 of
50 the penal law; or

51 (ii) the child has been found to be an abused child, as defined in
52 paragraph (iii) of subdivision (e) of section ten hundred twelve of the
53 family court act, as a result of such parent's or person legally respon-
54 sible's acts; provided, however, the respondent must have committed or
55 knowingly allowed to be committed a felony sex offense as defined in
56 sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67,

1 130.70, 130.75, 130.80, 130.95 and 130.96 of the penal law and, for the
2 purposes of this section the corroboration requirements contained in the
3 penal law shall not apply to proceedings under this section; or

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

43 (iv) in the case where the child, who is the subject of the petition,
44 is in foster care, the agency has made diligent efforts to encourage and
45 strengthen the parental relationship, including efforts to rehabilitate
46 the respondent, when such efforts will not be detrimental to the best
47 interests of the child, and such efforts have been unsuccessful and are
48 unlikely to be successful in the foreseeable future. Where a court has
49 previously determined in accordance with this chapter or the family
50 court act that reasonable efforts to make it possible for the child to
51 return safely to his or her home are not required, the agency shall not
52 be required to demonstrate diligent efforts as set forth in this
53 section.

54 (b) For the purposes of this section a child is "repeatedly abused" by
55 his or her parent or by a respondent who is or was a person legally

1 responsible as defined in subdivision (g) of section one thousand twelve
2 of the family court act, for a child, if:

3 (i) the child has been found to be an abused child, (A) as defined in
4 paragraph (i) of subdivision (e) of section ten hundred twelve of the
5 family court act, as a result of such parent's or person legally respon-
6 sible's acts; or (B) as defined in paragraph (iii) of subdivision (e) of
7 section ten hundred twelve of the family court act, as a result of such
8 parent's acts; provided, however, the respondent must have committed or
9 knowingly allowed to be committed a felony sex offense as defined in
10 sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67,
11 130.70, 130.75, 130.80, 130.95 and 130.96 of the penal law; and

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

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

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

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

52 (e) A determination by the court in accordance with article ten of the
53 family court act based upon clear and convincing evidence that a child
54 was abused (A) as defined in paragraph (i) of subdivision (e) of section
55 ten hundred twelve of the family court act, as a result of such parent's
56 acts; or (B) as defined in paragraph (iii) of subdivision (e) of section

1 ten hundred twelve of the family court act, as a result of such parent's
2 acts; provided, however, the respondent must have committed or knowingly
3 allowed to be committed a felony sex offense as defined in sections
4 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70,
5 130.75 and 130.80 of the penal law shall establish that the child was an
6 abused child for the purpose of a determination as required by subpara-
7 graph (i) or (ii) of paragraph (b) of this subdivision. Such a determi-
8 nation by the court in accordance with article ten of the family court
9 act based upon a fair preponderance of evidence shall be admissible in
10 any proceeding commenced in accordance with this section.

11 (f) Upon a finding pursuant to paragraph (a) or (b) of this subdivi-
12 sion that the child has been severely or repeatedly abused by his or her
13 parent or by a person legally responsible, as defined by subdivision (g)
14 of section one thousand twelve of the family court act, for a child, the
15 court shall enter an order of disposition either (i) committing the
16 guardianship and custody of the child or any child of such parent,
17 pursuant to this section, or (ii) suspending judgment in accordance with
18 section six hundred thirty-three of the family court act, upon a further
19 finding, based on clear and convincing, competent, material and relevant
20 evidence introduced in a dispositional hearing, that the best interests
21 of the child require such commitment or suspension of judgment, or (iii)
22 terminating the rights of one parent where the child will be in the
23 custody of another parent, a relative or the local commissioner of
24 social services. Where the disposition ordered is the commitment of
25 guardianship and custody pursuant to this section, an initial freed
26 child permanency hearing shall be completed pursuant to section one
27 thousand eighty-nine of the family court act.

28 (g) A petition filed pursuant to this subdivision may also be filed
29 where a child is the child of a respondent who severely abused or
30 repeatedly abused a child for whom he or she was a person legally
31 responsible, as defined in subdivision (g) of section one thousand
32 twelve of the family court act.

33 (h) A petition may be filed pursuant to this subdivision when the
34 severely or repeatedly abused child is not in foster care and/or when
35 only one of such child's parents is a respondent.

36 § 5. This act shall take effect on the ninetieth day after it shall
37 have become a law.