

STATE OF NEW YORK

5472--B

2017-2018 Regular Sessions

IN SENATE

March 30, 2017

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 -- recommitted to the Committee on Children and Families in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the family court act, in relation to reentry of former foster care children into foster care

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 6 of section 355.3 of the family court act, as amended by chapter 663 of the laws of 1985, is amended to read as follows:

6. Successive extensions of placement under this section may be granted, but no placement may be made or continued beyond the respondent's eighteenth birthday without [~~the child's~~] his or her consent and in no event past [~~the child's~~] his or her twenty-first birthday. A respondent who has attained the age of eighteen but is less than twenty-one years of age may move or, with his or her consent, may be the subject of a motion to reenter foster care in accordance with the provisions of section one thousand ninety-one of this act, provided that:

(i) the respondent was either discharged from foster care on or after attaining the age of eighteen due to a failure to consent to the continuation of placement or was discharged from foster care on or after attaining the age of sixteen but who is or is likely to be homeless unless returned to foster care; and

(ii) where the respondent had been previously placed or transferred into placement with a local social services district pursuant to this section or section 353.3 or 355.1 of this part, the motion may be made

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

LBD10273-04-8

1 by a social services official; or where the respondent had been previ-
2 ously placed with the state office of children and family services for a
3 non-secure or limited secure level of care pursuant to this section or
4 section 353.3 or 355.1 of this part where the placement was made in a
5 county that does not have an approved "close to home" program, the
6 motion may be made by an official of the state office of children and
7 family services.

8 § 2. Subdivision 6 of section 355.3 of the family court act, as
9 amended by section 75 of part WWW of chapter 59 of the laws of 2017, is
10 amended to read as follows:

11 6. Successive extensions of placement under this section may be grant-
12 ed, but no placement may be made or continued beyond the respondent's
13 eighteenth birthday without [~~the child's~~] his or her consent for acts
14 committed before the respondent's sixteenth birthday and in no event
15 past [~~the child's~~] his or her twenty-first birthday except as provided
16 for in subdivision four of section 353.5 of this part. A respondent who
17 has attained the age of eighteen but is less than twenty-one years of
18 age may move or, with his or her consent, may be the subject of a motion
19 to reenter foster care in accordance with the provisions of section one
20 thousand ninety-one of this act, provided that:

21 (i) the respondent was either discharged from foster care on or after
22 attaining the age of eighteen due to a failure to consent to the contin-
23 uation of placement or was discharged from foster care on or after
24 attaining the age of sixteen but who is or is likely to be homeless
25 unless returned to foster care; and

26 (ii) where the respondent had been previously placed or transferred
27 into placement with a local social services district pursuant to this
28 section or section 353.3 or 355.1 of this part, the motion may be made
29 by a social services official; or where the respondent had been previ-
30 ously placed with the state office of children and family services for a
31 non-secure or limited secure level of care pursuant to this section or
32 section 353.3 or 355.1 of this part where the placement was made in a
33 county that does not have an approved "close to home" program, the
34 motion may be made by an official of the state office of children and
35 family services.

36 § 3. Subdivision (f) of section 756-a of the family court act, as
37 added by chapter 604 of the laws of 1986, is amended to read as follows:

38 (f) Successive extensions of placement under this section may be
39 granted, but no placement may be made or continued beyond the child's
40 eighteenth birthday without his or her consent and in no event past his
41 or her twenty-first birthday. A child who was previously placed with a
42 local social services district pursuant to section seven hundred fifty-
43 six of this part and who was discharged from foster care on or after
44 attaining the age of eighteen due to a failure to consent to continua-
45 tion of placement or was discharged from foster care on or after attain-
46 ing the age of sixteen but who is or is likely to be homeless unless
47 returned to foster care may move, or, with his or her consent, may be
48 the subject of a motion by a social services official to reenter foster
49 care in accordance with the provisions of section one thousand ninety-
50 one of this act.

51 § 4. Section 1088 of the family court act, as amended by chapter 605
52 of the laws of 2011, is amended to read as follows:

53 § 1088. Continuing court jurisdiction. (a) If a child is placed pursu-
54 ant to section three hundred fifty-eight-a, three hundred eighty-four,
55 or three hundred eighty-four-a of the social services law, or pursuant
56 to section one thousand seventeen, one thousand twenty-two, one thousand

1 twenty-seven, one thousand fifty-two, one thousand eighty-nine, one
2 thousand ninety-one, one thousand ninety-four or one thousand ninety-
3 five of this act, or directly placed with a relative pursuant to section
4 one thousand seventeen or one thousand fifty-five of this act; or if the
5 child is freed for adoption pursuant to section six hundred thirty-seven
6 of this act or section three hundred eighty-three-c, three hundred
7 eighty-four or three hundred eighty-four-b of the social services law,
8 the case shall remain on the court's calendar and the court shall main-
9 tain jurisdiction over the case until the child is discharged from
10 placement and all orders regarding supervision, protection or services
11 have expired.

12 (b) The court shall rehear the matter whenever it deems necessary or
13 desirable, or upon motion by any party entitled to notice in proceedings
14 under this article, or by the attorney for the child, and whenever a
15 permanency hearing is required by this article. While the court main-
16 tains jurisdiction over the case, the provisions of section one thousand
17 thirty-eight of this act shall continue to apply.

18 (c) The court shall also maintain jurisdiction over a case for
19 purposes of hearing a motion to permit a former foster care youth [~~under~~
20 ~~the age of twenty-one who was discharged from foster care due to a fail-~~
21 ~~ure to consent to continuation of placement~~], as defined in subdivision
22 (a) of section one thousand ninety-one of this act, to return to the
23 custody of the [~~local commissioner of~~] social services [~~or other offi-~~
24 ~~cer, board or department authorized to receive children as public charg-~~
25 ~~es~~] district from which the youth was most recently discharged, or, in
26 the case of a child freed for adoption, the authorized agency into whose
27 custody and guardianship the child has been placed.

28 § 5. Section 1091 of the family court act, as added by chapter 342 of
29 the laws of 2010, is amended to read as follows:

30 § 1091. Motion to return to foster care placement. (a) For purposes
31 of this article, "former foster care youth" shall mean a youth who has
32 attained the age of eighteen but is under the age of twenty-one and who
33 had been:

34 (1) discharged from foster care on or after attaining the age of eigh-
35 teen due to a failure to consent to continuation in foster care or
36 discharged from foster care on or after attaining the age of sixteen but
37 who is or is likely to be homeless unless returned to foster care; and

38 (2)(i) placed in foster care with a local social services district
39 pursuant to article three, seven, ten, ten-A or ten-C of this act or
40 section three hundred fifty-eight-a of the social services law; or

41 (ii) freed for adoption in accordance with section six hundred thir-
42 ty-seven of this act or section three hundred eighty-three-c, three
43 hundred eighty-four or three hundred eighty-four-b of the social
44 services law but has not yet been adopted; or

45 (iii) the subject of a motion to restore parental rights that had been
46 conditionally granted pursuant to paragraph (iii) of subdivision (b) of
47 section six hundred thirty-seven of this act; or

48 (iv) placed with the office of children and family services for a
49 non-secure or limited secure level of care pursuant to section 353.3,
50 355.1 or 355.3 of this act where the placement was made in a county that
51 does not have an approved "close to home" program.

52 (b) A motion to return a former foster care youth [~~under the age of~~
53 ~~twenty-one, who was discharged from foster care due to a failure to~~
54 ~~consent to continuation of placement,~~] to the custody of the [~~local~~
55 ~~commissioner of~~] social services [~~or other officer, board or department~~
56 ~~authorized to receive children as public charges~~] district from which

1 the youth was most recently discharged, or, in the case of a youth
2 placed with the office of children and family services in accordance
3 with subparagraph (iv) of paragraph two of subdivision (a) of this
4 section, the commissioner of the office of children and family services,
5 or, in the case of a child freed for adoption, the social services
6 district or authorized agency into whose custody and guardianship the
7 child has been placed, may be made by such former foster care youth, or
8 by ~~[a]~~ the applicable official of the local social services ~~[official]~~
9 district, authorized agency or the office of children and family
10 services upon the consent of such former foster care youth, if there is
11 a compelling reason for such former foster care youth to return to
12 foster care~~[, provided however, that the].~~

13 (c) (1) With respect to a former foster care youth discharged on or
14 after his or her eighteenth birthday, the court shall not entertain a
15 motion filed after twenty-four months from the date of the first final
16 discharge that occurred on or after the former foster care youth's eigh-
17 teenth birthday.

18 (2) With respect to a former foster care youth discharged prior to his
19 or her eighteenth birthday, the court shall not entertain a motion filed
20 after his or her twenty-first birthday.

21 ~~[(a)]~~ (d) A motion made pursuant to this ~~[section]~~ article by ~~[a]~~ the
22 applicable official of the local social services ~~[official]~~ district,
23 authorized agency or the office of children and family services shall be
24 made by order to show cause. Such motion shall show by affidavit or
25 other evidence that:

26 (1) the former foster care youth has no reasonable alternative to
27 foster care;

28 (2) the former foster care youth consents to enrollment in and attend-
29 ance at an appropriate educational or vocational program, unless
30 evidence is submitted that such enrollment or attendance is unnecessary
31 or inappropriate, given the particular circumstances of the youth;

32 (3) re-entry into foster care is in the best interests of the former
33 foster care youth; ~~[and]~~

34 (4) the former foster care youth consents to the re-entry into foster
35 care; and

36 (5) in the case of a former foster youth discharged from foster care
37 on or after attaining the age of sixteen, the youth is or is likely to
38 be homeless unless returned to foster care.

39 ~~[(b)]~~ (e) A motion made pursuant to this ~~[section]~~ article by a former
40 foster care youth shall be made by order to show cause ~~[on]~~ on ten days
41 notice to the applicable official of the local social services ~~[offi-~~
42 ~~cial]~~ district, authorized agency or the office of children and family
43 services. Such motion shall show by affidavit or other evidence that:

44 (1) the requirements outlined in paragraphs one, two and three and, if
45 applicable, paragraph five of subdivision ~~[(a)]~~ (d) of this section are
46 met; and

47 (2) (i) the applicable official of the local social services district,
48 authorized agency or the office of children and family services consents
49 to the re-entry of such former foster care youth, or ~~[if]~~

50 (ii) the applicable official of the local social services district,
51 authorized agency or the office of children and family services refuses
52 to consent to the re-entry of such former foster care youth and ~~[that]~~
53 such refusal is unreasonable.

54 ~~[(a)]~~ (f) (1) If at any time during the pendency of a proceeding
55 brought pursuant to this ~~[section]~~ article, the court finds a compelling
56 reason that it is in the best interests of the former foster care youth

1 to be returned immediately to the custody of the applicable local
2 commissioner of social services or ~~[other officer, board or department~~
3 ~~authorized to receive children as public charges]~~ official of the appli-
4 cable authorized agency or the office of children and family services,
5 pending a final decision on the motion, the court may issue a temporary
6 order returning the youth to the custody of ~~[the]~~ such local commission-
7 er of social services or other ~~[officer, board or department authorized~~
8 ~~to receive children as public charges]~~ official.

9 (2) Where the applicable official of the local social services
10 district, authorized agency or the office of children and family
11 services has refused to consent to the re-entry of a former foster care
12 youth, and where it is alleged pursuant to subparagraph (ii) of para-
13 graph two of subdivision ~~[(b)]~~ (e) of this section, that such refusal
14 ~~[by such social services district]~~ is unreasonable, the court shall
15 grant a motion made pursuant to subdivision ~~[(b)]~~ (e) of this section if
16 the court finds and states in writing that the refusal ~~[by the local~~
17 ~~social services district]~~ is unreasonable. For purposes of this
18 ~~[section]~~ article, a court shall find that a refusal ~~[by a local social~~
19 ~~services district]~~ to allow a former foster care youth to re-enter care
20 is unreasonable if:

21 (i) the youth has no reasonable alternative to foster care;
22 (ii) the youth consents to enrollment in and attendance at an appro-
23 priate educational or vocational program, unless the court finds a
24 compelling reason that such enrollment or attendance is unnecessary or
25 inappropriate, given the particular circumstances of the youth; and
26 (iii) re-entry into foster care is in the best interests of the former
27 foster care youth.

28 (3) Upon making a determination on a motion filed pursuant to this
29 ~~[section]~~ article, where a motion has previously been granted pursuant
30 to this ~~[section]~~ article, in addition to the applicable findings
31 required by this ~~[section]~~ article, the court shall grant the motion to
32 return a former foster care youth to the custody of the applicable local
33 commissioner of social services or ~~[other officer, board or department~~
34 ~~authorized to receive children as public charges]~~ official of the appli-
35 cable authorized agency or the office of children and family services,
36 only:

37 (i) upon a finding that there is a compelling reason for such former
38 foster care youth to return to care;

39 (ii) if the court has not previously granted a subsequent motion for
40 such former foster care youth to return to care pursuant to this para-
41 graph; and

42 (iii) upon consideration of the former foster care youth's compliance
43 with previous orders of the court, including the youth's previous
44 participation in an appropriate educational or vocational program, if
45 applicable.

46 § 6. This act shall take effect immediately; provided however that
47 section two of this act shall take effect on the same date and in the
48 same manner as section 75 of part WWW of chapter 59 of the laws of 2017,
49 as amended, takes effect.