

STATE OF NEW YORK

3319

2017-2018 Regular Sessions

IN SENATE

January 20, 2017

Introduced by Sen. KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the family court act, in relation to establishing procedures for the termination of parental rights upon the application of a parent or guardian

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

1 Section 1. The family court act is amended by adding a new article 6-A
2 to read as follows:

ARTICLE 6-A

PERMANENT TERMINATION OF PARENTAL RIGHTS UPON APPLICATION OF A PARENT OR GUARDIAN

Section 675. Purpose of article.

676. Jurisdiction.

677. Definitions.

678. Originating proceeding for the termination of parental
rights with respect to a permanently neglected child.

679. Issuance of summons.

680. Service of summons.

681. Procedural matters.

682. Nondisclosure of information in exceptional circumstances.

683. Evidence.

684. Hearings.

685. Determination.

686. Adjournments.

687. Disposition on adjudication of permanent neglect.

688. Order dismissing petition.

689. Suspended judgment.

690. Termination of parental rights; further orders.

691. Issuance of warrant; certificate of warrant.

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

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1 § 675. Purpose of article. The purpose of this article is to provide
2 the procedures for proceedings initiated in family court by a parent or
3 guardian for the termination of the rights of a respondent-parent upon
4 the ground that the respondent-parent has permanently neglected the
5 child.

6 § 676. Jurisdiction. The family court shall have exclusive, original
7 jurisdiction over any proceeding brought upon grounds specified in this
8 article.

9 § 677. Definitions. As used in this article:

10 (a) "permanently neglected child" shall mean a child whose respon-
11 dent-parent or custodian has failed for a period of either at least one
12 year substantially and continuously, or repeatedly, to maintain contact
13 with or plan for the future of the child, although physically and finan-
14 cially able to do so;

15 (b) "petitioner" or "petitioner-parent" means the parent or guardian
16 commencing the action to terminate the parental rights of the respon-
17 dent-parent;

18 (c) "respondent-parent" means the parent whose parental rights are
19 subject to termination;

20 (d) "fact-finding hearing" means a hearing to determine whether the
21 allegations required by paragraphs one, two and three of subdivision (a)
22 of section six hundred seventy-eight of this article are supported by
23 clear and convincing proof; and

24 (e) "dispositional hearing" means a hearing to determine what order of
25 disposition should be made in accordance with the best interests of the
26 child.

27 § 678. Originating proceeding for the termination of parental rights
28 with respect to a permanently neglected child. (a) A proceeding for the
29 termination of parental rights with respect to a child on the ground of
30 permanent neglect is originated by a petition and notice served upon the
31 respondent-parent or his or her attorney, alleging:

32 1. the child is a person under eighteen years of age;

33 2. the child is in the care of one of his or her parents or of a guar-
34 dian;

35 3. the child's respondent-parent has failed to maintain contact with
36 or plan for the future of the child, although physically and financially
37 able to do so, for a period of at least one year; and

38 4. the best interests of the child require that the parental rights of
39 the respondent-parent be terminated.

40 (b) Such notice shall inform the respondent-parent that the proceeding
41 may result in an order terminating his or her parental rights with
42 respect to the child without the consent of or notice to the respon-
43 dent-parent. Such notice also shall inform the respondent-parent of his
44 or her right to the assistance of counsel, including any right they may
45 have to have counsel assigned by the court in any case where they are
46 financially unable to obtain counsel. The petition shall set forth the
47 names and last known addresses of the respondent-parent.

48 § 679. Issuance of summons. On the filing of a petition under this
49 article, the court may cause a copy of the petition and a summons to be
50 issued, requiring the respondent-parent to show cause why the court
51 should not enter an order committing the guardianship and custody of the
52 child to the petitioner-parent for the reason that the child is perma-
53 nently neglected by the respondent-parent.

54 § 680. Service of summons. (a) Service of a summons and petition under
55 this article shall be made by delivery of a true copy thereof to the
56 person summoned at least twenty days before the time stated therein for

1 appearance. If so requested by the respondent-parent, the court may
2 extend the time for appearance and answer.

3 (b) If after reasonable effort, personal service is not made, such
4 substituted service or service by publication as may be ordered by the
5 judge shall be sufficient.

6 (c) Personal service within or without the state or in a foreign coun-
7 try shall be made in accordance with the provisions of section three
8 hundred seven of the surrogate's court procedure act, as the same may be
9 amended from time to time, with respect to service of a citation.

10 (d) Service of the summons and other process with a notice as speci-
11 fied herein by publication shall be made in accordance with the
12 provisions of rule three hundred sixteen of the civil practice law and
13 rules, provided, however, that a single publication of the summons or
14 other process with a notice as specified herein in only one newspaper
15 designated in the order shall be sufficient. In no event shall the whole
16 petition be published. The petition shall be delivered to the person
17 summoned at the first court appearance pursuant to section one hundred
18 fifty-four-a of this act. The notice to be published with the summons or
19 other process shall state:

20 1. the date, time, place and purpose of the proceeding;

21 2. that upon failure of the person summoned to appear, all of his or
22 her parental rights with respect to the child may be terminated; and

23 3. that his or her failure to appear shall constitute a denial of his
24 or her interest in the child, which denial may result, without further
25 notice, in the termination of his or her parental rights with respect to
26 the child.

27 § 681. Procedural matters. (a) The provisions of articles one, two and
28 eleven of this act shall apply to the extent that they do not conflict
29 with the specific provisions of this article. In any proceeding under
30 this section, the provisions and limitations of article thirty-one of
31 the civil practice law and rules shall apply to the extent that they do
32 not conflict with the specific provisions of this article. The court
33 shall set a schedule for discovery to avoid unnecessary delay.

34 (b) In any proceeding brought pursuant to the provisions of this arti-
35 cle, neither the privilege attaching to confidential communications
36 between husband and wife, as set forth in section forty-five hundred two
37 of the civil practice law and rules, nor the physician-patient and
38 related privileges, as set forth in section forty-five hundred four of
39 the civil practice law and rules, nor the psychologist-client privilege,
40 as set forth in section forty-five hundred seven of the civil practice
41 law and rules, nor the social worker-client privilege, as set forth in
42 section forty-five hundred eight of the civil practice law and rules,
43 shall be a ground for excluding evidence which otherwise would be admis-
44 sible.

45 § 682. Nondisclosure of information in exceptional circumstances.
46 Upon a finding, which may be made ex parte, that the health, safety, or
47 liberty of the petitioner-parent or the child would be unreasonably put
48 at risk by the disclosure of identifying information, or if an existing
49 order so provides, the court shall order that the address of the child
50 or petitioner or other identifying information not be disclosed in a
51 pleading or other document filed in a proceeding under this article. In
52 determining any motion for a protective order, the court shall consider
53 the need of the respondent-parent for the discovery to assist in the
54 preparation of the case and any potential harm to the child from the
55 discovery.

1 § 683. Evidence. Only competent, material and relevant evidence may be
2 admitted in a fact-finding hearing; only material and relevant evidence
3 may be admitted in a dispositional hearing. Evidence of parental contact
4 or of failure to maintain contact with a child subsequent to the date of
5 the filing of a petition under this part shall be inadmissible in the
6 fact-finding hearing. Such evidence may be admitted in the dispositional
7 hearing but shall not, of itself, be sufficient as a matter of law to
8 preclude or require an order terminating the respondent-parent's
9 parental rights with respect to the child.

10 § 684. Hearings. (a) Upon completion of the fact-finding hearing, the
11 dispositional hearing may commence immediately after the required find-
12 ings are made; provided, however, that if all parties consent the court
13 may, upon motion of any party or upon its own motion, dispense with the
14 dispositional hearing and make an order of disposition on the basis of
15 competent evidence admitted at the fact-finding hearing.

16 (b) Reports prepared by the probation service or a duly authorized
17 agency for use by the court prior to the making of an order of disposi-
18 tion shall be deemed confidential information furnished to the court
19 which the court in a proper case may, in its discretion, withhold from
20 or disclose in whole or in part to the petitioner's attorney, counsel,
21 party in interest, or other appropriate person. Such reports may not be
22 furnished to the court prior to the completion of a fact-finding hear-
23 ing, but may be used in a dispositional hearing or in the making of an
24 order of disposition without a dispositional hearing pursuant to subdi-
25 vision (a) of this section.

26 § 685. Determination. (a) A determination of whether a respondent-par-
27 ent has failed for a period of either at least one year substantially
28 and continuously, or repeatedly, to maintain contact with or plan for
29 the future of the child, although physically and financially able to do
30 so shall be based on evidence, which may include the following:

31 1. a respondent-parent's expressions or acts manifesting concern for
32 the child, such as letters, telephone calls and other forms of communi-
33 cation with the child;

34 2. the payment by the respondent-parent toward the support of the
35 child of a fair and reasonable sum, according to the respondent-parent's
36 means;

37 3. either: (i) the respondent-parent's visiting the child at least
38 monthly when physically and financially able to do so and not prevented
39 from doing so by the person having lawful custody of the child; or (ii)
40 the respondent-parent's regular communication with the child or with the
41 person having the care or custody of the child, when physically and
42 financially unable to visit the child or prevented from doing so by the
43 person having lawful custody of the child;

44 4. efforts by the respondent-parent to communicate and work with the
45 petitioner-parent, the court and the respondent-parent's attorney or
46 other individuals providing services to the respondent-parent, including
47 correctional, mental health and substance abuse treatment program
48 personnel for the purpose of complying with a service plan or court-ord-
49 ered plan and repairing, maintaining or building the parent-child
50 relationship;

51 5. whether the respondent-parent openly lived with the child and/or
52 the petitioner parent for a continuous period of six months within the
53 one year period immediately preceding the filing of the petition and who
54 during such period openly held himself or herself out to be the parent
55 of such child;

1 6. in the case of a child under the age of six months of age at the
2 time of the filing of the petition, whether the respondent-parent father
3 paid a fair and reasonable sum, in accordance with his means, for the
4 medical, hospital and nursing expenses incurred in connection with the
5 petitioner-parent mother's pregnancy and/or with the birth of the child;

6 7. whether the respondent-parent surrendered or attempted to surrender
7 the child to an authorized agency under the provisions of section three
8 hundred eighty-three-c or three hundred eighty-four of the social
9 services law, or whether a guardian has been appointed for the child
10 under the provisions of section three hundred eighty-four-b of the
11 social services law; or

12 8. whether the respondent-parent has maintained a meaningful role in
13 his or her child's life in any form; and

14 9. whether the involvement or continued involvement of the respon-
15 dent-parent in the child's life is in the child's best interest.

16 (b) Notwithstanding the provisions of subdivision (a) of this section,
17 the court shall terminate the parental rights of a respondent-parent who
18 has executed an instrument, which shall be irrevocable, denying the
19 paternity of the child, such instrument having been executed after
20 conception and acknowledged or proved in the manner required to permit
21 the recording of a deed.

22 (c) 1. The subjective intent of the respondent-parent, whether
23 expressed or otherwise, unsupported by evidence of acts specified in
24 subdivision (a) of this section manifesting such intent, shall not
25 preclude a determination that the respondent-parent failed for a period
26 of either at least one year substantially and continuously, or repeated-
27 ly, to maintain contact with or plan for the future of the child,
28 although physically and financially able. In making such a determi-
29 nation, the court shall not require a showing of diligent efforts by any
30 person or agency to encourage the respondent-parent to perform the acts
31 specified in subdivision (a) of this section.

32 2. Evidence of insubstantial or infrequent contacts by a respondent-
33 parent with his or her child shall not, of itself, be sufficient as a
34 matter of law to preclude a determination that such child is a perma-
35 nently neglected child. A visit or communication by a respondent-parent
36 with the child which is of such character as to overtly demonstrate a
37 lack of affectionate and concerned parenthood shall not be deemed a
38 substantial contact.

39 3. In the absence of evidence to the contrary, the ability to visit
40 and communicate with a child or with the person having custody of the
41 child shall be presumed.

42 (d) 1. The court shall consider the special circumstances of a respon-
43 dent-parent serving in the armed forces, of an incarcerated respondent-
44 parent, of a mentally ill or mentally retarded respondent-parent and of
45 a respondent-parent participating in a residential substance abuse
46 treatment program, when determining whether a child is a "permanently
47 neglected child" as defined in this article. In such cases, the court
48 also shall consider the particular constraints, including but not limit-
49 ed to, limitations placed on family contact and the unavailability of
50 social or rehabilitative services to aid in the development of a mean-
51 ingful relationship between the respondent-parent and his or her child,
52 that may impact the respondent-parent's ability to substantially and
53 continuously or repeatedly maintain contact with his or her child and to
54 plan for the future of his or her child.

55 2. For the purposes of this subdivision:

1 (i) a respondent-parent shall not be deemed unable to maintain contact
2 with or plan for the future of the child by reason of such parent's use
3 of drugs or alcohol, except while the parent is actually hospitalized or
4 institutionalized therefor; and

5 (ii) the time during which a respondent-parent is actually hospital-
6 ized or institutionalized, for mental or physical illness or due to
7 substance abuse, shall not interrupt, but shall not be part of, a period
8 of failure to maintain contact with or plan for the future of a child.

9 3. The determination as to whether a parent is mentally ill or mental-
10 ly retarded shall be made in accordance with the criteria and procedures
11 set forth in subdivision six of section three hundred eighty-four-b of
12 the social services law. Any provisions of this article which explicit-
13 ly or implicitly apply to, or reference, persons who are, or who are
14 alleged to be, mentally retarded shall be deemed to apply to, or to be a
15 reference to, persons who are, or who are alleged to be, developmentally
16 disabled.

17 (e) As used in this article, "to plan for the future of the child"
18 shall mean to take such steps as may be necessary to provide an
19 adequate, stable home and parental care for the child within a period of
20 time which is reasonable under the financial circumstances available to
21 the parent. The plan must be realistic and feasible, and good faith
22 effort shall not, of itself, be determinative. In determining whether a
23 respondent-parent has planned for the future of the child, the court may
24 consider the failure of the parent to utilize medical, psychiatric,
25 psychological and other social and rehabilitative services and material
26 resources made available to such parent.

27 § 686. Adjournments. (a) The court may adjourn a fact-finding hearing
28 or a dispositional hearing for good cause shown on its own motion or on
29 motion made on behalf of the child, or on motion of the petitioner-
30 parent or of the respondent-parent.

31 (b) At the conclusion of a fact-finding hearing and after it has made
32 findings required before a dispositional hearing may commence, the court
33 may adjourn the proceedings to enable it to make inquiry into the
34 surroundings, conditions, and capacities of the persons involved in the
35 proceedings.

36 § 687. Disposition on adjudication of permanent neglect. (a) At the
37 conclusion of a dispositional hearing on a petition for the termination
38 of parental rights with respect to a child, the court shall enter an
39 order of disposition:

40 1. dismissing the petition in accord with section six hundred eighty-
41 eight of this article; or

42 2. suspending judgment in accord with section six hundred eighty-nine
43 of this article; or

44 3. terminating the respondent-parent's parental rights with respect to
45 the child in accordance with section six hundred ninety of this article;
46 provided, however, that an order of disposition terminating parental
47 rights with respect to a child may not be entered after the child's
48 eighteenth birthday, unless the child consents.

49 (b) An order of disposition shall be made, pursuant to this section,
50 solely on the basis of the best interests of the child, and there shall
51 be no presumption that such interests will be promoted by any particular
52 disposition.

53 § 688. Order dismissing petition. (a) If the allegations of a petition
54 under this article are not established, the court shall dismiss the
55 petition.

1 (b) If a motion or application has been made in the course of a
2 proceeding under this article to reconsider an underlying order of
3 termination, or upon the court's own motion on notice to all parties,
4 the court retains jurisdiction to dispose of that motion or application
5 regardless of whether it dismisses the petition.

6 § 689. Suspended judgment. (a) Rules of court shall define permissible
7 terms and conditions of a suspended judgment. These terms and conditions
8 shall relate to the acts or omissions of the respondent-parent.

9 (b) The maximum duration of a suspended judgment under this section is
10 one year, unless the court finds at the conclusion of that period that
11 exceptional circumstances require an extension of that period for one
12 additional period of up to one year. Successive extensions may not be
13 granted.

14 (c) The order of suspended judgment must set forth the duration, terms
15 and conditions of the suspended judgment, and must contain a date
16 certain for a court review not later than thirty days prior to the expi-
17 ration of the period of suspended judgment. The order of suspended judg-
18 ment must also state in conspicuous print that a failure to obey the
19 order may lead to its revocation and to the issuance of an order termi-
20 nating parental rights. A copy of the order of suspended judgment, along
21 with any plan the respondent-parent is to comply with, must be furnished
22 to the respondent-parent.

23 (d) Not later than sixty days before the expiration of the period of
24 suspended judgment, the respondent-parent shall file a report with the
25 family court and all parties, including the petitioner-parent and his or
26 her attorney, the child's attorney and interveners, if any, regarding
27 the respondent-parent's compliance with the terms of suspended judgment.
28 The petitioner-parent, the child's attorney and interveners, if any, may
29 file a response to the respondent-parent's report not later than thirty
30 days before the expiration of the period of suspended judgment. The
31 report and response shall be reviewed by the court on the scheduled
32 court date. Unless a motion or order to show cause has been filed prior
33 to the expiration of the period of suspended judgment alleging a
34 violation or seeking an extension of the period of the suspended judg-
35 ment, the terms of the disposition of suspended judgment shall be deemed
36 satisfied and an order terminating the respondent-parent's parental
37 rights with respect to the child shall not be entered.

38 (e) If, prior to the expiration of the period of the suspended judg-
39 ment, a motion or order to show cause is filed that alleges a violation
40 of the terms and conditions of the suspended judgment, or that seeks to
41 extend the period of the suspended judgment for an additional period of
42 up to one year, then the period of the suspended judgment is tolled
43 until entry of the order that disposes of the motion or order to show
44 cause.

45 (f) Upon finding that the respondent-parent has violated the terms and
46 conditions of the order of suspended judgment, the court may enter an
47 order revoking the order of suspended judgment and terminating the
48 parental rights of the respondent-parent or, where such extension is in
49 the best interests of the child, extend the period of suspended judgment
50 for an additional period of up to one year, if no prior extension has
51 been granted.

52 § 690. Termination of parental rights; further orders. The court may
53 enter an order under section six hundred eighty-seven of this article
54 terminating the respondent-parent's parental rights with respect to the
55 child. An order terminating the respondent-parent's parental rights
56 pursuant to this section shall be granted only upon a finding that the

1 grounds specified in this article are based upon clear and convincing
2 proof.

3 § 691. Issuance of warrant; certificate of warrant. (a) The court may
4 issue a warrant, directing that the respondent be arrested, brought
5 before the court, when a petition is presented to the court under
6 section six hundred seventy-eight of this article and it appears that:

7 1. the summons cannot be served; or

8 2. the respondent-parent has failed to obey the summons; or

9 3. the respondent-parent is likely to leave the jurisdiction; or

10 4. a summons, in the court's opinion, would be ineffectual; or

11 5. the safety of the petitioner-parent or of the child is endangered;
12 or

13 6. a respondent-parent on bail or on parole has failed to appear.

14 (b) The petitioner-parent may not serve a warrant upon the respon-
15 dent-parent unless the court itself grants such permission upon the
16 application of the petitioner-parent. The clerk of the court may issue
17 to the petitioner-parent a certificate stating that a warrant for the
18 respondent-parent has been issued by the court. The presentation of such
19 certificate by said petitioner or representative to any peace officer,
20 acting pursuant to his or her special duties, or police officer author-
21 izes him or her to arrest the respondent and take him or her to court.

22 (c) A certificate of warrant expires ninety days from the date of
23 issue but may be renewed from time to time by the clerk of the court.

24 (d) Rules of court shall provide that a record of all unserved
25 warrants be kept and that periodic reports concerning unserved warrants
26 be made.

27 § 2. Paragraph (iv) of subdivision (a) of section 115 of the family
28 court act, as amended by chapter 37 of the laws of 2016, is amended to
29 read as follows:

30 (iv) proceedings to permanently terminate parental rights to guardian-
31 ship and custody of a child: (A) by reason of permanent neglect, as set
32 forth in part one of article six of this act and paragraph (d) of subdivi-
33 vision four of section three hundred eighty-four-b of the social
34 services law, (B) by reason of mental illness, intellectual disability
35 and severe or repeated child abuse, as set forth in paragraphs (c) and
36 (e) of subdivision four of section three hundred eighty-four-b of the
37 social services law, [and] (C) by reason of the death of one or both
38 parents, where no guardian of the person of the child has been lawfully
39 appointed, or by reason of abandonment of the child for a period of six
40 months immediately prior to the filing of the petition, where a child is
41 under the jurisdiction of the family court as a result of a placement in
42 foster care by the family court pursuant to article ten or ten-A of this
43 act or section three hundred fifty-eight-a of the social services law,
44 unless the court declines jurisdiction pursuant to section three hundred
45 eighty-four-b of the social services law, and (D) by reason of permanent
46 neglect, as set forth in article six-A of this act;

47 § 3. Severability. If any clause, sentence, paragraph, section or part
48 of this act shall be adjudged by any court of competent jurisdiction to
49 be invalid and after exhaustion of all further judicial review, the
50 judgment shall not affect, impair or invalidate the remainder thereof,
51 but shall be confined in its operation to the clause, sentence, para-
52 graph, section or part of this act directly involved in the controversy
53 in which the judgment shall have been rendered.

54 § 4. This act shall take effect on the first of January next succeed-
55 ing the date on which it shall have become a law; provided that, effec-
56 tive immediately, the chief administrator of the courts shall promulgate

1 appropriate rules and regulations for the implementation of the
2 provisions of this act.