

# STATE OF NEW YORK

4765--A

2017-2018 Regular Sessions

## IN SENATE

February 27, 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 -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report and ordered reprinted, retaining its place in the order of second report

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

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

LBD06664-02-8

1 siblings or half-siblings are fourteen years of age or older shall not  
2 be enforceable unless such child and such sibling or half-sibling  
3 consent to the agreement in writing. The court shall not incorporate an  
4 agreement regarding communication or contact into an order unless the  
5 terms and conditions of the agreement have been set forth in writing and  
6 consented to in writing by the parties to the agreement, including the  
7 attorney representing the adoptive child. The court shall not enter a  
8 proposed order unless the court in which the surrender was executed or  
9 the court that approved the surrender of the child determined and stated  
10 in its order that the communication with or contact between the adoptive  
11 child, the prospective adoptive parent or parents and a birth parent or  
12 parents and/or biological siblings or half-siblings, as agreed upon and  
13 as set forth in the agreement, would be in the adoptive child's best  
14 interests. Notwithstanding any other provision of law, a copy of the  
15 order entered pursuant to this section incorporating the post-adoption  
16 contact agreement shall be given to all parties who have agreed to the  
17 terms and conditions of such order.

18 With respect to surrenders executed on or after January first, two  
19 thousand nineteen, an agreement regarding communication or contact  
20 following an adoption is only enforceable if approval of the agreement  
21 has been incorporated into an order in conjunction with a surrender  
22 executed before a judge; provided, however, that an agreement regarding  
23 communication or contact following an adoption of a child from an  
24 authorized agency made in conjunction with an extra-judicial surrender  
25 may be enforceable if the following additional conditions have been met:  
26 (i) the party or parties surrendering the child attest in a sworn affi-  
27 davit that it would be an undue hardship to appear in court to execute  
28 the surrender; and (ii) the party or parties surrendering the child were  
29 represented by counsel and such counsel was present at the execution of  
30 the surrender and informed the surrendering party or parties of the  
31 requirements for enforceability of the post-adoption contact agreement.

32 § 2. Paragraph (iv) of subdivision (a) of section 262 of the family  
33 court act, as amended by chapter 3 of the laws of 2012, is amended to  
34 read as follows:

35 (iv) the parent or person legally responsible, foster parent, or other  
36 person having physical or legal custody of the child in any proceeding  
37 under article ten or ten-A of this act or section three hundred fifty-  
38 eight-a, three hundred eighty-three-c, three hundred eighty-four or  
39 three hundred eighty-four-b of the social services law, and a non-custo-  
40 dial parent or grandparent served with notice pursuant to paragraph (e)  
41 of subdivision two of section three hundred eighty-four-a of the social  
42 services law;

43 § 3. Paragraph (b) of subdivision 2 of section 383-c of the social  
44 services law, as amended by chapter 41 of the laws of 2010, is amended  
45 to read as follows:

46 (b) (i) If a surrender instrument designates a particular person or  
47 persons who will adopt a child, such person or persons, the child's  
48 birth parent or parents, the authorized agency having care and custody  
49 of the child and the child's attorney[7] may enter into a written agree-  
50 ment providing for communication or contact between the child and the  
51 child's parent or parents on such terms and conditions as may be agreed  
52 to by the parties. Such terms and conditions shall be set forth in writ-  
53 ing and consented to in writing by the parties to the agreement, includ-  
54 ing the attorney representing the child.

55 (ii) If a surrender instrument does not designate a particular person  
56 or persons who will adopt the child, then the child's birth parent or

1 parents, the authorized agency having care and custody of the child and  
2 the child's attorney may enter into a written agreement providing for  
3 communication or contact, on such terms and conditions as may be agreed  
4 to by the parties. Such terms and conditions shall be set forth in writ-  
5 ing and consented to in writing by the parties to the agreement, includ-  
6 ing the attorney representing the child.

7 (iii) Such agreement also may provide terms and conditions for commu-  
8 nication with or contact between the child and the child's biological  
9 siblings or half-siblings, if any. If any such sibling or half-sibling  
10 is fourteen years of age or older, such terms and conditions shall not  
11 be enforceable unless such sibling or half-sibling consents to the  
12 agreement in writing.

13 (iv) If the court before which the surrender instrument is presented  
14 for approval determines that the agreement concerning communication and  
15 contact is in the child's best interests, the court shall approve the  
16 agreement and incorporate such approval into a written court order, a  
17 copy of which shall be given to the parties. If the court does not  
18 approve the agreement, the court may nonetheless approve the surrender;  
19 provided, however, that the birth parent or parents executing the  
20 surrender instrument shall be informed that the agreement is not  
21 enforceable in a court of law and shall be given the opportunity at that  
22 time to withdraw such instrument.

23 (v) Enforcement of any agreement prior to the adoption of the child  
24 shall be in accordance with subdivision (b) of section one thousand  
25 fifty-five-a of the family court act. Subsequent to the adoption of the  
26 child, enforcement of any agreement shall be in accordance with section  
27 one hundred twelve-b of the domestic relations law.

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

30 (g) A surrender of a child, executed on or after January first, two  
31 thousand nineteen, which is made in conjunction with an agreement  
32 containing conditions, including, but not limited to, identifying the  
33 prospective adoptive parent or parents or prescribing communication or  
34 contact with the child and the adoptive parent or parents and/or between  
35 the child and his or her biological siblings or half-siblings following  
36 the surrender and adoption of the child shall be executed before a  
37 judge; provided, however, that such an agreement made in conjunction  
38 with an extra-judicial surrender executed after such date may be  
39 enforceable if the following conditions have been met in addition to  
40 those delineated in paragraph (b) of this subdivision: (i) the party or  
41 parties surrendering the child attest in a sworn affidavit that it would  
42 be an undue hardship to appear in court to execute the surrender; and  
43 (ii) the party or parties surrendering the child were represented by  
44 counsel and such counsel was present at the execution of the surrender  
45 and informed the surrendering party or parties of the requirements for  
46 enforceability of the agreement.

47 § 5. Subparagraphs (ii) and (iii) of paragraph (b) of subdivision 5 of  
48 section 383-c of the social services law, subparagraph (ii) as amended  
49 by chapter 601 of the laws of 1994 and subparagraph (iii) as added by  
50 chapter 479 of the laws of 1990, are amended to read as follows:

51 (ii) that the parent is giving up all rights to have custody, visit  
52 with, speak with, write to or learn about the child, forever, unless the  
53 parties have agreed to different terms pursuant to subdivision two of  
54 this section[7] and unless such terms are written in the surrender or  
55 are written in an agreement approved by the court in an order in accord-  
56 ance with such subdivision, or, if the parent registers with the

1 adoption information register, as specified in section forty-one hundred  
2 thirty-eight-d of the public health law, that the parent may be  
3 contacted at anytime after the child reaches the age of eighteen years,  
4 but only if both the parent and the adult child so choose;

5 (iii) that the child will be adopted without the parent's consent and  
6 without further notice to the parent, and will be adopted by any person  
7 that the agency chooses, unless the surrender paper or an agreement  
8 approved by the court in an order in accordance with subdivision two of  
9 this section contains the name of the person or persons who will be  
10 adopting the child; and

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

14 (b) (i) If a surrender instrument designates a particular person or  
15 persons who will adopt a child, such person or persons, the child's  
16 birth parent or parents, the authorized agency having care and custody  
17 of the child and the child's attorney[7] may enter into a written agree-  
18 ment providing for communication or contact between the child and the  
19 child's parent or parents on such terms and conditions as may be agreed  
20 to by the parties. Such terms and conditions shall be set forth in writ-  
21 ing and consented to in writing by the parties to the agreement, includ-  
22 ing the attorney representing the child.

23 (ii) If a surrender instrument does not designate a particular person  
24 or persons who will adopt the child, then the child's birth parent or  
25 parents, the authorized agency having care and custody of the child and  
26 the child's attorney may enter into a written agreement providing for  
27 communication or contact, on such terms and conditions as may be agreed  
28 to by the parties. Such terms and conditions shall be set forth in writ-  
29 ing and consented to in writing by the parties to the agreement, includ-  
30 ing the attorney representing the child.

31 (iii) Such agreement also may provide terms and conditions for commu-  
32 nication with or contact between the child and the child's biological  
33 sibling or half-sibling, if any. If the child or any such sibling or  
34 half-sibling is fourteen years of age or older, [~~such terms and condi-~~  
35 ~~tions~~] an agreement for contact or communication between the child and  
36 his or her siblings or half-siblings shall not be enforceable unless  
37 such child, sibling or half-sibling consents to the agreement in writ-  
38 ing.

39 (iv) If the court before which the surrender instrument is presented  
40 for execution or approval, determines that the agreement [~~concerning~~  
41 ~~communication and contact~~] is in the child's best interests, the court  
42 shall approve the agreement and incorporate such approval into a written  
43 court order, a copy of which shall be given to the parties. If the court  
44 does not approve the agreement, the court may nonetheless approve the  
45 surrender; provided, however, that the birth parent or parents executing  
46 the surrender instrument shall be informed that the agreement is not  
47 enforceable in a court of law and shall be given the opportunity at that  
48 time to withdraw such instrument. Enforcement of any agreement prior to  
49 the adoption of the child shall be in accordance with subdivision (b) of  
50 section one thousand fifty-five-a of the family court act. Subsequent to  
51 the adoption of the child, enforcement of any agreement shall be in  
52 accordance with section one hundred twelve-b of the domestic relations  
53 law.

54 § 7. Subdivision 3 of section 384 of the social services law, as  
55 amended by chapter 479 of the laws of 1990, the opening paragraph as  
56 amended by chapter 185 of the laws of 2006, the fifth undesignated para-

1 graph as added by chapter 680 of the laws of 2007, the sixth undesig-  
2 nated paragraph and the closing paragraph as added by chapter 76 of the  
3 laws of 2002, and subparagraphs (i) and (ii) of the sixth undesignated  
4 paragraph as amended by chapter 41 of the laws of 2010, is amended to  
5 read as follows:

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

21 (b) A surrender of a child, executed on or after January first, two  
22 thousand nineteen, which is made in conjunction with an agreement  
23 containing conditions, including, but not limited to, identifying the  
24 prospective adoptive parent or parents or prescribing communication or  
25 contact with the child and the adoptive parent or parents and/or between  
26 the child and his or her biological siblings or half-siblings following  
27 the surrender and adoption of the child shall be executed before a  
28 judge; provided, however, that such an agreement made in conjunction  
29 with an extra-judicial surrender executed after such date may be  
30 enforceable if the following conditions have been met in addition to  
31 those delineated in paragraph (b) of subdivision two of this section:

32 (i) the party or parties surrendering the child attest in a sworn  
33 affidavit that it would be an undue hardship to appear in court to  
34 execute the surrender; and

35 (ii) the party or parties surrendering the child were represented by  
36 counsel and such counsel was present at the execution of the surrender  
37 and informed the surrendering party or parties of the requirements for  
38 enforceability of the agreement.

39 (c) Such record shall be subject to inspection and examination only as  
40 provided in subdivisions three and four of section three hundred seven-  
41 ty-two of this title.

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

45 (e) Whenever the term surrender or surrender instrument is used in any  
46 law relating to the adoption of children who are not in foster care, it  
47 shall mean and refer exclusively to the instrument [~~hereinabove~~]  
48 described in this subdivision for the commitment of the guardianship of  
49 the person and the custody of a child to an authorized agency by his or  
50 her parents, parent or guardian; and in no case shall it be deemed to  
51 apply to any instrument purporting to commit the guardianship of the  
52 person and the custody of a child to any person other than an authorized  
53 agency, nor shall such term or the provisions of this section be deemed  
54 to apply to any instrument transferring the care and custody of a child  
55 to an authorized agency pursuant to section three hundred eighty-four-a  
56 of this [~~chapter~~] title.

1     (f)(i) Any person or persons having custody of a child for the purpose  
2 of adoption through an authorized agency shall be permitted as a matter  
3 of right, as an interested party, to intervene in any proceeding  
4 commenced to set aside a surrender purporting to commit a guardianship  
5 of the person or custody of a child executed under the provisions of  
6 this section. Such intervention may be made anonymously or in the true  
7 name of said person.

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

16     (g) A copy of such surrender shall be given to [~~such~~] the surrendering  
17 parent upon the execution thereof. The surrender shall include the  
18 following statement: "I, (name of surrendering parent), this \_\_\_ day of  
19 \_\_\_\_\_, \_\_\_\_\_, have received a copy of this surrender. (Signature of  
20 surrendering parent)". Such surrendering parent shall so acknowledge the  
21 delivery and the date of the delivery in writing on the surrender.

22     (h) Where the parties have agreed that the surrender shall be subject  
23 to conditions pursuant to subdivision two of this section, the instru-  
24 ment shall further state in plain language that:

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

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

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

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

51     § 8. Subdivision 4 of section 384 of the social services law, as  
52 amended by chapter 185 of the laws of 2006, is amended to read as  
53 follows:

54     4. Upon petition by an authorized agency, a judge of the family court,  
55 or a surrogate, may approve such surrender, on such notice to such  
56 persons as the surrogate or judge may in his or her discretion

1 prescribe. If the child is being surrendered as a result of, or in  
2 connection with, a proceeding before the family court pursuant to arti-  
3 cle ten or ten-A of the family court act, the petition shall be filed in  
4 the family court that exercised jurisdiction over such proceeding and  
5 shall be assigned, wherever practicable, to the judge who last presided  
6 over such proceeding. The petition shall set forth the names and last  
7 known addresses of all persons required to be given notice of the  
8 proceeding, pursuant to section three hundred eighty-four-c of this  
9 title, and there shall be shown by the petition or by affidavit or other  
10 proof satisfactory to the court that there are no persons other than  
11 those set forth in the petition who are entitled to notice pursuant to  
12 such section. At the time that a parent appears before a judge or surro-  
13 gate to execute and acknowledge a surrender or for the judge to approve  
14 a surrender, the judge or surrogate shall inform such parent of the  
15 right to be represented by legal counsel of the parent's own choosing  
16 and of the right to obtain supportive counseling and of any right to  
17 have counsel assigned pursuant to section two hundred sixty-two of the  
18 family court act, section four hundred seven of the surrogate's court  
19 procedure act, or section thirty-five of the judiciary law. No person  
20 who has received such notice and been afforded an opportunity to be  
21 heard may challenge the validity of a surrender approved pursuant to  
22 this subdivision in any other proceeding. However, this subdivision  
23 shall not be deemed to require approval of a surrender by a surrogate or  
24 judge for such surrender to be valid, provided, however, that an agree-  
25 ment made in conjunction with a surrender that contains conditions,  
26 including, but not limited to, identifying the prospective adoptive  
27 parent or parents or prescribing communication or contact with the child  
28 and the adoptive parent or parents and/or between the child and his or  
29 her biological siblings or half-siblings following the surrender and  
30 adoption of the child shall be enforceable in a court of law only if the  
31 requirements of subdivisions two and three of this section have been  
32 met.

33 § 9. This act shall take effect on the first of January next succeed-  
34 ing the date on which it shall have become a law.