# 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.

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

§ 2. Subdivision 6 of section 355.3 of the family court act, as amended by section 75 of part WWW of chapter 59 of the laws of 2017, 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 for acts committed before the respondent's sixteenth birthday and in no event past [~~the child's~~] his or her twenty-first birthday except as provided for in subdivision four of section 353.5 of this part. 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 by a social services official; or where the respondent had been previously placed with the state office of children and family services for a non-secure or limited secure level of care pursuant to this section or section 353.3 or 355.1 of this part where the placement was made in a county that does not have an approved "close to home" program, the motion may be made by an official of the state office of children and family services.

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

(f) Successive extensions of placement under this section may be granted, but no placement may be made or continued beyond the child's eighteenth birthday without his or her consent and in no event past his or her twenty-first birthday. A child who was previously placed with a local social services district pursuant to section seven hundred fifty-six of this part and who was discharged from foster care on or after attaining the age of eighteen due to a failure to consent to 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 may move, or, with his or her consent, may be the subject of a motion by a social services official to reenter foster care in accordance with the provisions of section one thousand ninety-one of this act.

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

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

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

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

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

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

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

**(1) discharged from foster care on or after attaining the age of eighteen due to a failure to consent to continuation in foster care or 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**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

to be returned immediately to the custody of the applicable local commissioner of social services or [other officer, board or department authorized to receive children as public charges] official of the applicable authorized agency or the office of children and family services, pending a final decision on the motion, the court may issue a temporary order returning the youth to the custody of [the] such local commissioner of social services or other [officer, board or department authorized to receive children as public charges] official.

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

(i) the youth has no reasonable alternative to foster care;

(ii) the youth consents to enrollment in and attendance at an appropriate educational or vocational program, unless the court finds a compelling reason that such enrollment or attendance is unnecessary or inappropriate, given the particular circumstances of the youth; and

(iii) re-entry into foster care is in the best interests of the former foster care youth.

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

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

(ii) if the court has not previously granted a subsequent motion for such former foster care youth to return to care pursuant to this paragraph; and

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

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