STATE OF NEW YORK

7681--A

2021-2022 Regular Sessions

IN ASSEMBLY

May 19, 2021

Introduced by M. of A. FERNANDEZ -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Children and Families -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the family court act and the executive law, 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 section 75 of part WWW of chapter 59 of the laws of 2017, is amended and a new subdivision 7 is added 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.

7. A youth who was formerly a respondent pursuant to this article may be eligible to file a motion pursuant to article ten-B of this act and may be subsequently placed into foster care, in a supervised setting as defined in subdivision twenty-two of section three hundred seventy-one of the social services law or placement in a foster family home, which shall include a kinship placement or a placement with fictive kin.

§ 2. Section 756-a of the family court act is amended by adding a new subdivision (i) to read as follows:

(i) A youth who was formerly a respondent pursuant to this article shall be eligible to file a motion pursuant to article ten-B of this act and may be subsequently placed into foster care, in a supervised setting as defined in subdivision twenty-two of section three hundred seventy-

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

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one of the social services law or placement in a foster family home, which shall include a kinship placement or a placement with fictive kin.

§ 3. Paragraph (i) and the opening paragraph of subparagraph (A) of paragraph (ii) of subdivision (e) of section 1055 of the family court act, as amended by chapter 34 of the laws of 2021, are amended to read as follows:

(i) No placement may be made or continued under this section beyond the child's eighteenth birthday without his or her consent and in no event past his or her twenty-first birthday. However, a former foster care youth [~~under the age of twenty-one who was previously discharged from foster care due to a failure to consent to continuation of placement~~], as defined in section one thousand ninety-one of this act, may make a motion pursuant to such 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. In such motion, the youth must consent to enrollment in and attendance at a vocational or educational program in accordance with paragraph [~~two~~] three of subdivision [~~(a)~~] (d) of section one thousand ninety-one of this act.

A former foster care youth [~~under the age of twenty-one who was previously discharged from foster care due to a failure to consent to continuation of placement pursuant to~~], as defined in section one thousand ninety-one of this act, may:

§ 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-one 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 article ten-B 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 youth previously placed with the office of children and family services for placement, to be placed in the custody of the social services district of the child's

residence 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 and the opening paragraph as amended by chapter 34 of the laws of 2021, is amended to read as follows:

§ 1091. Motion to return to foster care placement. (a) For purposes of this article:

(1) "Former foster care youth" shall mean a youth:

(i) who has attained the age of eighteen but is under the age of twenty-one and who had been discharged from a foster care setting on or after:

(A) attaining the age of eighteen due to a failure to consent to continuation in foster care; or

(B) attaining the age of sixteen but who is or is likely to be homeless unless returned to foster care; and

(ii)(A) placed in foster care with a local social services district or authorized agency, as applicable, 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

(B) freed for adoption in accordance with section six hundred thirty-one 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

(C) placed with the office of children and family services as a juvenile delinquent for a non-secure level of care pursuant to article three of this act.

(2) "Foster care setting" shall not include placements in:

(i) (A) a limited secure or secure level of care with the office of children and family services; or

(B) a limited secure level of care where the placement was made in a county that has an approved "close to home" program pursuant to section four hundred four of the social services law.

(ii) Provided however, a youth who was previously placed in a limited secure or secure level of care but was subsequently transferred to a non-secure level of care may still be eligible to re-enter if such youth was ultimately released from a non-secure setting.

(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 previously placed with the office of children and family services, to be placed in the custody of the social services district of the child's residence, or, in the case of a child freed for adoption, the social services district or authorized agency into whose custody and guardianship such 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 eigh-

teenth birthday; provided further, however, that during the state of emergency declared pursuant to Executive Order 202 of 2020 or any extension or subsequent executive order issued in response to the novel coronavirus (COVID-19) pandemic, such motion shall be heard and determined on an expedited basis; provided further, a former foster care youth shall be entitled 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 without making a motion pursuant to this section and, to the extent federally allowable, any requirement to enroll in and attend an educational or vocational program shall be waived for the duration of such state of emergency. Subsequent to a former foster youth's return to placement without making a motion, as authorized under this section during the state of emergency declared pursuant to Executive Order 202 of 2020 or any extension or subsequent executive order issued in response to the novel coronavirus (COVID-19) pandemic, nothing herein shall prohibit the local social services district from filing a motion for requisite findings needed to subsequently claim reimbursement under Title IV-E of the federal social security act to support the youth's care, and the family court shall hear and determine such motions on an expedited basis.

[~~(a)~~] **(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 twentieth birthday; provided further, however, that during the state of emergency declared pursuant to Executive Order 202 of 2020, or any extension or subsequent order issued, such former foster youth shall be entitled 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 without making a motion in accordance with paragraph one of this subdivision and, to the extent federally allowable, any requirement to enroll in and attend an educational or vocational program shall be waived for the duration of the state of emergency. Subsequent to a former foster youth's return to placement without making a motion, as authorized under this section during the state of emergency declared pursuant to Executive Order 202 of 2020 or any extension or subsequent executive order issued in response to the novel coronavirus (COVID-19) pandemic, nothing herein shall prohibit the local social services district from filing a motion for requisite findings needed to subsequently claim reimbursement under Title IV-E of the federal social security act to support the youth's care, and the family court shall hear and determine such motions on an expedited basis.**

(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, four 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 paragraph two of subdivision (b) 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. Subdivision 5 of section 507-a of the executive law, as amended by section 80 of part WWW of chapter 59 of the laws of 2017, is amended to read as follows:

5. Consistent with other provisions of law, in the discretion of the commissioner of the office of children and family services, youth placed within the office under the family court act who attain the age of eighteen while in custody of the office and who are not required to remain in the placement with the office as a result of a dispositional order of the family court may reside in a **placement in an authorized agency or a** non-secure facility until the age of twenty-one, provided that such youth attend a full-time vocational or educational program and are likely to benefit from such program.

§ 7. This act shall take effect immediately; provided, however, that the amendments to section 1055 and the opening paragraph of section 1091 of the family court act made by sections three and five of this act shall not affect the expiration of such subdivision and paragraph and shall be deemed to expire therewith.