

# STATE OF NEW YORK

1479

2021-2022 Regular Sessions

## IN SENATE

January 12, 2021

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

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.

§ 675. Purpose of article. The purpose of this article is to provide  
the procedures for proceedings initiated in family court by a parent or  
guardian for the termination of the rights of a respondent-parent upon

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

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1 the ground that the respondent-parent has permanently neglected the  
2 child.

3 § 676. Jurisdiction. The family court shall have exclusive, original  
4 jurisdiction over any proceeding brought upon grounds specified in this  
5 article.

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

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

12 (b) "petitioner" or "petitioner-parent" means the parent or guardian  
13 commencing the action to terminate the parental rights of the respon-  
14 dent-parent;

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

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

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

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

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

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

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

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

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

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

51 § 680. Service of summons. (a) Service of a summons and petition under  
52 this article shall be made by delivery of a true copy thereof to the  
53 person summoned at least twenty days before the time stated therein for  
54 appearance. If so requested by the respondent-parent, the court may  
55 extend the time for appearance and answer.

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

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

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

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

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

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

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

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

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

54 § 683. Evidence. Only competent, material and relevant evidence may be  
55 admitted in a fact-finding hearing; only material and relevant evidence  
56 may be admitted in a dispositional hearing. Evidence of parental contact

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

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

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

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

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

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

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

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

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

53 6. in the case of a child under the age of six months of age at the  
54 time of the filing of the petition, whether the respondent-parent father  
55 paid a fair and reasonable sum, in accordance with his means, for the

1 medical, hospital and nursing expenses incurred in connection with the  
2 petitioner-parent mother's pregnancy and/or with the birth of the child;

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

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

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

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

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

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

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

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

52 2. For the purposes of this subdivision:

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



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

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

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

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

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

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

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

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

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

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

49 § 688. Order dismissing petition. (a) If the allegations of a petition  
50 under this article are not established, the court shall dismiss the  
51 petition.

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

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

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

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

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

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

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

47     § 690. Termination of parental rights; further orders. The court may  
48 enter an order under section six hundred eighty-seven of this article  
49 terminating the respondent-parent's parental rights with respect to the  
50 child. An order terminating the respondent-parent's parental rights  
51 pursuant to this section shall be granted only upon a finding that the  
52 grounds specified in this article are based upon clear and convincing  
53 proof.

54     § 691. Issuance of warrant; certificate of warrant. (a) The court may  
55 issue a warrant, directing that the respondent be arrested, brought

1 before the court, when a petition is presented to the court under  
2 section six hundred seventy-eight of this article and it appears that:

3 1. the summons cannot be served; or

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

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

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

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

8 or

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

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

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

20 (d) Rules of court shall provide that a record of all unserved  
21 warrants be kept and that periodic reports concerning unserved warrants  
22 be made.

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

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

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

50 § 4. This act shall take effect on the first of January next succeed-  
51 ing the date on which it shall have become a law. Effective immediately  
52 the addition, amendment and/or repeal of any rule or regulation neces-  
53 sary for the implementation of this act on its effective date are  
54 authorized to be made and completed on or before such date.