STATE OF NEW YORK

6389

2021-2022 Regular Sessions

IN SENATE

April 26, 2021

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

AN ACT to amend the domestic relations law and the social services law, in relation to the rights of non-marital parents in adoption, surrender, and termination of parental rights proceedings in family court and surrogate's court; and to repeal subdivision 12 of section 384-b of the social services law relating thereto

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

Section 1. Paragraphs (d), (e), and (f) of subdivision 1 of section 111 of the domestic relations law, paragraphs (d) and (e) as added and paragraph (f) as relettered by chapter 575 of the laws of 1980, and paragraph (f) as amended by chapter 666 of the laws of 1976, are amended to read as follows:

(d) **Of any person or authorized agency having lawful custody or guardianship of the adoptive child;**

(e) In the case of the adoption of a child transferred to the custody and guardianship of an authorized agency, foster parent, or relative pursuant to section three hundred eighty-four-b of the social services law or a child transferred to the custody and guardianship of an authorized agency pursuant to section three hundred eighty-three-c of the social services law:

(i) Of any person adjudicated by a court of this state or a court of any other state or territory of the United States to be the father of the child prior to the filing of a petition to terminate parental rights to the child pursuant to section three hundred eighty-four-b of the social services law, an application to execute a judicial surrender of rights to the child pursuant to subdivision three of section three hundred eighty-three-c of the social services law, or an application for approval of an extra-judicial surrender pursuant to subdivision four of section three hundred eighty-three-c of the social services law;

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

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(ii) Of any person who filed a petition in a court in this state seeking to be adjudicated the father of the child prior to the filing of a petition to terminate parental rights to the child pursuant to section three hundred eighty-four-b of the social services law, an application to execute a judicial surrender of rights to the child pursuant to subdivision three of section three hundred eighty-three-c of the social services law, or an application for approval of an extra-judicial surrender pursuant to subdivision four of section three hundred eighty-three-c of the social services law, provided that the parentage petition has been resolved in the petitioner's favor or remains pending at the conclusion of the proceedings pursuant to section three hundred eighty-four-b, three hundred eighty-three-c, or three hundred eighty-four of the social services law;

(iii) Of any person who has executed an acknowledgment of parentage pursuant to section one hundred eleven-k of the social services law, section five hundred sixteen-a of the family court act, or section forty-one hundred thirty-five-b of the public health law prior to the filing of a petition to terminate parental rights to the child pursuant to section three hundred eighty-four-b of the social services law, an application to execute a judicial surrender of rights to the child pursuant to subdivision three of section three hundred eighty-three-c of the social services law, or an application for approval of an extra-judicial surrender pursuant to subdivision four of section three hundred eighty-three-c of the social services law, provided that such acknowledgement has not been vacated;

(iv) Of any person who filed an unrevoked notice of intent to claim parentage of the child pursuant to section three hundred seventy-two-c of the social services law prior to the filing of a petition to terminate parental rights to the child pursuant to section three hundred eighty-four-b of the social services law, an application to execute a judicial surrender of rights to the child pursuant to subdivision three of section three hundred eighty-three-c of the social services law, or an application for approval of an extra-judicial surrender pursuant to subdivision four of section three hundred eighty-three-c of the social services law;

(f) In any other adoption proceeding:

(i) Of the father, whether adult or infant, of a child born out-of-wedlock and placed with the adoptive parents more than six months after birth, but only if such father shall have maintained substantial and continuous or repeated contact with the child as manifested by: [~~(i)~~] (A) the payment by the father toward the support of the child of a fair and reasonable sum, according to the father's means, and either [~~(ii)~~] (B) the father's visiting the child at least monthly when physically and financially able to do so and not prevented from doing so by the person or authorized agency having lawful custody of the child, or [~~(iii)~~] (C) the father's regular communication with the child or with the person or agency having the care or custody of the child, when physically and financially unable to visit the child or prevented from doing so by the person or authorized agency having lawful custody of the child. The subjective intent of the father, whether expressed or otherwise, unsupported by evidence of acts specified in this paragraph manifesting such intent, shall not preclude a determination that the father failed to maintain substantial and continuous or repeated contact with the child. In making such a determination, the court shall not require a showing of diligent efforts by any person or agency to encourage the father to perform the acts specified in this paragraph. A father, whether adult or

infant, of a child born out-of-wedlock, who openly lived with the child for a period of six months within the one year period immediately preceding the placement of the child for adoption and who during such period openly held himself out to be the father of such child shall be deemed to have maintained substantial and continuous contact with the child for the purpose of this subdivision[~~.~~]**;**

[~~(c)~~] **(ii)** Of the father, whether adult or infant, of a child born out-of-wedlock who is under the age of six months at the time he is placed for adoption, but only if: [~~(i)~~] **(A)** such father openly lived with the child or the child's mother for a continuous period of six months immediately preceding the placement of the child for adoption; and [~~(ii)~~] **(B)** such father openly held himself out to be the father of such child during such period; and [~~(iii)~~] **(C)** such father paid a fair and reasonable sum, in accordance with his means, for the medical, hospital and nursing expenses incurred in connection with the mother's pregnancy or with the birth of the child.

[~~(f) Of any person or authorized agency having lawful custody of the adoptive child.~~]

§ 2. Subdivision 1 of section 111-a of the domestic relations law, as amended by chapter 371 of the laws of 2013, is amended to read as follows:

1. Notwithstanding any inconsistent provisions of this or any other law, and in addition to the notice requirements of any law pertaining to persons other than those specified in subdivision two of this section, notice as provided herein shall be given to the persons specified in subdivision two of this section of any adoption proceeding initiated pursuant to this article or of any proceeding initiated pursuant to section one hundred fifteen-b of this article relating to the revocation of an adoption consent, when such proceeding involves a child born out-of-wedlock provided, however, that such notice shall not be required to be given [~~to any person who previously has been given notice of any proceeding involving the child, pursuant to section three hundred eighty-four-c of the social services law, and provided further that notice in an adoption proceeding, pursuant to this section shall not be required to be given~~]**: (a) in the case of the adoption of a child transferred to the custody and guardianship of an authorized agency, foster parent, or relative pursuant to section three hundred eighty-four-b of the social services law or a child transferred to the custody and guardianship of an authorized agency pursuant to section three hundred eighty-three-c of the social services law; or (b)** to any person who has previously received notice of any proceeding pursuant to section one hundred fifteen-b of this article. In addition to such other requirements as may be applicable to the petition in any proceeding in which notice must be given pursuant to this section, the petition shall set forth the names and last known addresses of all persons required to be given notice of the proceeding, pursuant to this section, and there shall be shown by the petition or by affidavit or other proof satisfactory to the court that there are no persons other than those set forth in the petition who are entitled to notice. For the purpose of determining persons entitled to notice of adoption proceedings initiated pursuant to this article, persons specified in subdivision two of this section shall not include any person who has been convicted of one or more of the following sexual offenses in this state or convicted of one or more offenses in another jurisdiction which, if committed in this state, would constitute one or more of the following offenses, when the child who is the subject of the proceeding was conceived as a result: (A) rape in first or second

degree; (B) course of sexual conduct against a child in the first degree; (C) predatory sexual assault; or (D) predatory sexual assault against a child.

§ 3. Paragraph (b) of subdivision 3 of section 383-c of the social services law, as amended by section 42 of part A of chapter 3 of the laws of 2005, is amended to read as follows:

(b) Before a judge or surrogate approves a judicial surrender, the judge or surrogate [~~shall~~] **may** order that notice of the surrender proceeding be given to [~~persons identified in subdivision two of section three hundred eighty-four-c of this title and to~~] such [~~other~~] persons as the judge or surrogate may, in his or her discretion, prescribe. At the time that a parent appears before a judge or surrogate to execute and acknowledge a surrender, the judge or surrogate shall inform such parent of the right to be represented by legal counsel of the parent's own choosing and of the right to obtain supportive counseling and of any right to have counsel assigned pursuant to section two hundred sixty-two of the family court act, section four hundred seven of the surrogate's court procedure act, or section thirty-five of the judiciary law. The judge or surrogate also shall inform the parent of the consequences of such surrender, including informing such parent that the parent is giving up all rights to have custody, visit with, speak with, write to or learn about the child, forever, unless the parties have agreed to different terms pursuant to subdivision two of this section, or, if the parent registers with the adoption information register, as specified in section forty-one hundred thirty-eight-d of the public health law, that the parent may be contacted at any time after the child reaches the age of eighteen years, but only if both the parent and the adult child so choose. The court shall determine whether the terms and conditions agreed to by the parties pursuant to subdivision two of this section are in the child's best interests before approving the surrender. The judge or surrogate shall inform the parent that where a surrender containing conditions has been executed, the parent is obligated to provide the authorized agency with a designated mailing address, as well as any subsequent changes in such address, at which the parent may receive notices regarding any substantial failure of a material condition, unless such notification is expressly waived by a statement written by the parent and appended to or included in such instrument. The judge or surrogate also shall inform the parent that the surrender shall become final and irrevocable immediately upon its execution and acknowledgment. The judge or surrogate shall give the parent a copy of such surrender upon the execution thereof.

§ 4. Paragraph (d) of subdivision 4 of section 383-c of the social services law, as amended by chapter 394 of the laws of 1993, is amended to read as follows:

(d) Before a judge or surrogate approves an extra-judicial surrender, the judge or surrogate shall order notice to be given to the person who executed the surrender[~~, to persons identified in subdivision two of section three hundred eighty-four-c of this title~~] and to such other persons as the judge or surrogate may, in his or her discretion, prescribe. [~~The petition shall set forth the names and last known addresses of all persons required to be given notice of the proceeding, pursuant to section three hundred eighty-four-c, and there shall be shown by the petition or by affidavit or other proof satisfactory to the court that there are no persons other than those set forth in the petition who are entitled to notice pursuant to such section.~~] No person who has received such notice and been afforded an opportunity to be heard

may challenge the validity of a surrender approved pursuant to this subdivision in any other proceeding. Nothing in this section shall be deemed to dispense with the consent to adopt if otherwise required of any person who has not executed the surrender.

§ 5. Paragraph (h) of subdivision 5 of section 383-c of the social services law, as added by section 45 of part A of chapter 3 of the laws of 2005 and as relettered by chapter 435 of the laws of 2008, is amended to read as follows:

(h) Upon execution of a surrender instrument, the parent executing the surrender shall provide information to the extent known regarding the other parent, any person to whom the surrendering parent had been married at the time of the conception or birth of the child and any other person who would be entitled to [~~notice of a proceeding to terminate parental rights pursuant to section three hundred eighty-four-c of this title~~] consent to the adoption of the child pursuant to subdivision one of section one hundred eleven of the domestic relations law. Such information shall include, but not be limited to, such parent's or person's name, last-known address, social security number, employer's address and any other identifying information. Any information provided pursuant to this paragraph shall be recorded in the uniform case record maintained pursuant to section four hundred nine-f of this article; provided, however, that the failure to provide such information shall not invalidate the surrender.

§ 6. Subdivision 8 of section 384 of the social services law, as added by section 51 of part A of chapter 3 of the laws of 2005, is amended to read as follows:

8. Upon execution of a surrender instrument, the parent executing the surrender shall provide information to the extent known regarding the other parent, any person to whom the surrendering parent had been married at the time of the conception or birth of the child and any other person [~~who would be entitled to notice of a proceeding to terminate parental rights pursuant to~~] listed in subdivision two of section three hundred eighty-four-c of this title. Such information shall include, but not be limited to, such parent's or person's name, last-known address, social security number, employer's address and any other identifying information. Any information provided pursuant to this subdivision shall be recorded in the uniform case record maintained pursuant to section four hundred nine-f of this article; provided, however, that the failure to provide such information shall not invalidate the surrender.

§ 7. Subdivision 1-b of section 384-a of the social services law, as added by section 53 of part A of chapter 3 of the laws of 2005, is amended to read as follows:

1-b. Upon accepting the transfer of care and custody of a child from the parent, guardian or other person to whom care of the child has been entrusted, a local social services official shall obtain information to the extent known from such person regarding the other parent, any person to whom the parent transferring care and custody had been married at the time of the conception or birth of the child, any person who would be entitled to consent to the adoption of the child pursuant to subdivision one of section one hundred eleven of the domestic relations law, and any other person [~~who would be entitled to notice of a proceeding to terminate parental rights pursuant to~~] listed in subdivision two of section three hundred eighty-four-c of this title. Such information shall include, but not be limited to, such parent's or person's name, last-known address, social security number, employer's address and any other

identifying information. Any information provided pursuant to this subdivision shall be recorded in the uniform case record maintained pursuant to section four hundred nine-f of this article; provided, however, that the failure to provide such information shall not invalidate the transfer of care and custody.

§ 8. Paragraph (e) of subdivision 3 of section 384-b of the social services law, as amended by section 55 of part A of chapter 3 of the laws of 2005, is amended to read as follows:

(e) A proceeding under this section is originated by a petition on notice served upon the child's parent or parents, the attorney for the child's parent or parents and upon such other persons as the court may in its discretion prescribe. Such notice shall inform the parents and such other persons that the proceeding may result in an order freeing the child for adoption without the consent of or notice to the parents or such other persons. Such notice also shall inform the parents and such other persons of their right to the assistance of counsel, including any right they may have to have counsel assigned by the court in any case where they are financially unable to obtain counsel. [~~The petition shall set forth the names and last known addresses of all persons required to be given notice of the proceeding, pursuant to this section and section three hundred eighty-four-c of this title, and there shall be shown by the petition or by affidavit or other proof satisfactory to the court that there are no persons other than those set forth in the petition who are entitled to notice pursuant to the provisions of this section or of section three hundred eighty-four-c of this title.~~] When the proceeding is initiated in family court service of the petition and other process shall be made in accordance with the provisions of section six hundred seventeen of the family court act, and when the proceeding is initiated in surrogate's court, service shall be made in accordance with the provisions of section three hundred seven of the surrogate's court procedure act. When the proceeding is initiated on the grounds of abandonment of a child less than one year of age at the time of the transfer of the care and custody of such child to a local social services official, the court shall take judicial notice of efforts to locate the child's parents or other known relatives or other persons legally responsible pursuant to paragraph (ii) of subdivision (b) of section one thousand fifty-five of the family court act.

§ 9. Subdivision 12 of section 384-b of the social services law is REPEALED.

§ 10. Subdivision 1 of section 384-c of the social services law, as amended by chapter 371 of the laws of 2013, is amended to read as follows:

1. Notwithstanding any inconsistent provision of this or any other law, and in addition to the notice requirements of any law pertaining to persons other than those specified in subdivision two of this section, notice as provided herein shall be given to the persons specified in subdivision two of this section of any proceeding initiated pursuant to sections three hundred fifty-eight-a[~~,~~] **and** three hundred eighty-four[~~, and three hundred eighty-four-b~~] of this [~~chapter~~] **title**, involving a child born out-of-wedlock. Persons specified in subdivision two of this section shall not include any person who has been convicted of one or more of the following sexual offenses in this state or convicted of one or more offenses in another jurisdiction which, if committed in this state, would constitute one or more of the following offenses, when the child who is the subject of the proceeding was conceived as a result: [~~(A)~~] **(a)** rape in first or second degree; [~~(B)~~] **(b)** course of sexual

conduct against a child in the first degree; [~~(C)~~] (c) predatory sexual assault; or [~~(D)~~] (d) predatory sexual assault against a child.

§ 11. Subdivision 3 of section 384-c of the social services law, as amended by chapter 575 of the laws of 1980, is amended to read as follows:

3. The provisions of this section shall not apply to persons entitled to notice pursuant to section one hundred eleven of the domestic relations law. The sole purpose of notice under this section shall be to enable the person served pursuant to subdivision two of this section to present evidence to the court relevant to the best interests of the child. [~~In any proceeding brought upon the ground specified in paragraph (d) of subdivision four of section three hundred eighty-four-b, a person served pursuant to this section may appear and present evidence only in the dispositional hearing.~~]

§ 12. Subdivision 7 of section 384-c of the social services law, as added by chapter 665 of the laws of 1976, is amended to read as follows:

7. No order of the court in any proceeding pursuant to section three hundred fifty-eight-a[~~,~~] or three hundred eighty-four [~~or three hundred eighty-four-b~~] of this [~~chapter~~] title or in any subsequent proceeding involving the child's custody, guardianship or adoption shall be vacated, annulled or reversed upon the application of any person who was properly served with notice in accordance with this section but failed to appear, or who waived notice pursuant to subdivision five of this section. Nor shall any order of the court in any proceeding involving the child's custody, guardianship or adoption be vacated, annulled or reversed upon the application of any person who was properly served with notice in accordance with this section in any previous proceeding in which the court determined that the transfer or commitment of the child's care, custody or guardianship to an authorized agency was in the child's best interests.

§ 13. This act shall take effect immediately.