

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:

1 Section 1. Paragraphs (d), (e), and (f) of subdivision 1 of section
2 111 of the domestic relations law, paragraphs (d) and (e) as added and
3 paragraph (f) as relettered by chapter 575 of the laws of 1980, and
4 paragraph (f) as amended by chapter 666 of the laws of 1976, are amended
5 to read as follows:

6 (d) Of any person or authorized agency having lawful custody or guar-
7 dianship of the adoptive child;

8 (e) In the case of the adoption of a child transferred to the custody
9 and guardianship of an authorized agency, foster parent, or relative
10 pursuant to section three hundred eighty-four-b of the social services
11 law or a child transferred to the custody and guardianship of an author-
12 ized agency pursuant to section three hundred eighty-three-c of the
13 social services law;

14 (i) Of any person adjudicated by a court of this state or a court of
15 any other state or territory of the United States to be the father of
16 the child prior to the filing of a petition to terminate parental rights
17 to the child pursuant to section three hundred eighty-four-b of the
18 social services law, an application to execute a judicial surrender of
19 rights to the child pursuant to subdivision three of section three
20 hundred eighty-three-c of the social services law, or an application for
21 approval of an extra-judicial surrender pursuant to subdivision four of
22 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 acknowledgment 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 ~~(+i+)~~

(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 ~~(+i+i+)~~ (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

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

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

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

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

22 1. Notwithstanding any inconsistent provisions of this or any other
23 law, and in addition to the notice requirements of any law pertaining to
24 persons other than those specified in subdivision two of this section,
25 notice as provided herein shall be given to the persons specified in
26 subdivision two of this section of any adoption proceeding initiated
27 pursuant to this article or of any proceeding initiated pursuant to
28 section one hundred fifteen-b of this article relating to the revocation
29 of an adoption consent, when such proceeding involves a child born out-
30 of-wedlock provided, however, that such notice shall not be required to
31 be given [~~to any person who previously has been given notice of any~~
32 ~~proceeding involving the child, pursuant to section three hundred eight-~~
33 ~~y-four-c of the social services law, and provided further that notice in~~
34 ~~an adoption proceeding, pursuant to this section shall not be required~~
35 ~~to be given~~]; (a) in the case of the adoption of a child transferred to

36 the custody and guardianship of an authorized agency, foster parent, or
37 relative pursuant to section three hundred eighty-four-b of the social
38 services law or a child transferred to the custody and guardianship of
39 an authorized agency pursuant to section three hundred eighty-three-c of
40 the social services law; or (b) to any person who has previously

41 received notice of any proceeding pursuant to section one hundred
42 fifteen-b of this article. In addition to such other requirements as may
43 be applicable to the petition in any proceeding in which notice must be
44 given pursuant to this section, the petition shall set forth the names
45 and last known addresses of all persons required to be given notice of
46 the proceeding, pursuant to this section, and there shall be shown by
47 the petition or by affidavit or other proof satisfactory to the court
48 that there are no persons other than those set forth in the petition who
49 are entitled to notice. For the purpose of determining persons entitled
50 to notice of adoption proceedings initiated pursuant to this article,
51 persons specified in subdivision two of this section shall not include
52 any person who has been convicted of one or more of the following sexual
53 offenses in this state or convicted of one or more offenses in another
54 jurisdiction which, if committed in this state, would constitute one or
55 more of the following offenses, when the child who is the subject of the
56 proceeding was conceived as a result: (A) rape in first or second

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

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

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

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

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

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

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

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

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

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

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

44 1-b. Upon accepting the transfer of care and custody of a child from
45 the parent, guardian or other person to whom care of the child has been
46 entrusted, a local social services official shall obtain information to
47 the extent known from such person regarding the other parent, any person
48 to whom the parent transferring care and custody had been married at the
49 time of the conception or birth of the child, any person who would be
50 entitled to consent to the adoption of the child pursuant to subdivision
51 one of section one hundred eleven of the domestic relations law, and any
52 other person [~~who would be entitled to notice of a proceeding to termi-~~
53 ~~nate parental rights pursuant to~~] listed in subdivision two of section
54 three hundred eighty-four-c of this title. Such information shall
55 include, but not be limited to, such parent's or person's name, last-
56 known address, social security number, employer's address and any other

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

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

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

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

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

43 1. Notwithstanding any inconsistent provision of this or any other
44 law, and in addition to the notice requirements of any law pertaining to
45 persons other than those specified in subdivision two of this section,
46 notice as provided herein shall be given to the persons specified in
47 subdivision two of this section of any proceeding initiated pursuant to
48 sections three hundred fifty-eight-a[~~7~~] and three hundred eighty-four[~~7~~
49 ~~and three hundred eighty-four-b~~] of this [~~chapter~~] title, involving a
50 child born out-of-wedlock. Persons specified in subdivision two of this
51 section shall not include any person who has been convicted of one or
52 more of the following sexual offenses in this state or convicted of one
53 or more offenses in another jurisdiction which, if committed in this
54 state, would constitute one or more of the following offenses, when the
55 child who is the subject of the proceeding was conceived as a result:
56 [~~(A)~~] (a) rape in first or second degree; [~~(B)~~] (b) course of sexual

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

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

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

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

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

31 § 13. This act shall take effect immediately.