STATE OF NEW YORK

10722

IN ASSEMBLY

September 9, 2022

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Hevesi) -- read once and referred to the Committee on Children and Families

AN ACT to amend the family court act, in relation to proceedings regarding destitute children

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

Section 1. Section 1093 of the family court act, as added by chapter 605 of the laws of 2011, subdivisions (a) and (b), paragraphs 1 and 2 of subdivision (c) and subdivision (d) as amended by chapter 3 of the laws of 2012, is amended to read as follows:

§ 1093. Originating proceedings. (a) Filing of the petition. [~~Only a commissioner of social services may originate a proceeding under this article.~~] **(1)** A proceeding under this article may be originated by the filing of a petition alleging that the child is a destitute child as defined by section one thousand ninety-two of this article. [~~A commissioner of social services, who accepts the care and custody of a child appearing to be a destitute child, shall provide for such child as authorized by law, including but not limited to section three hundred ninety-eight of the social services law, and shall file a petition pursuant to this section within fourteen days upon accepting the care and custody of such child.~~]

(2) (i) The following persons may originate proceedings under this section:

(A) a commissioner of social services;

(B) the child that is the subject of the petition, if such child is over the age of fourteen; or

(C) any other person on the court's direction.

(ii) A person seeking to file a petition on the court's direction pursuant to clause (C) of subparagraph (i) of this paragraph shall have access to the court for the purpose of making an ex parte application therefor. Nothing in this section shall be intended to prevent a family court judge from requiring such person to first report to an appropriate child protective agency.

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

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(3) A commissioner of social services who accepts the care and custody of a child appearing to be a destitute child, shall provide for such child as authorized by law, including but not limited to section three hundred ninety-eight of the social services law, and shall file a petition pursuant to this section within fourteen days upon accepting the care and custody of such child.

(b) Venue. A petition under this article shall be filed in the family court located in the county where the child resides or is found; provided however, that upon the motion of any party or the attorney for the child, the court may transfer a petition filed under this article to a county the court deems to be more appropriate under the circumstances, including, but not limited to, a county located within a jurisdiction where the child is domiciled or has another significant nexus.

(c) Contents of the petition. (1) The petition shall allege upon information and belief:

(i) **if the petitioner is not the child in question,** the manner, date and circumstance under which the child became known to the petitioner;

(ii) the child's date of birth, if known;

(iii) that the child is a destitute child as defined in subdivision (a) of section one thousand ninety-two of this article and the basis for the allegation;

(iv) the identity of the parent or parents of the child in question, if known;

(v) whether the parent or parents of the child are living or deceased, if known;

(vi) the whereabouts and last known address for the parent or parents, if known;

(vii) the identity of a caretaker or interested adult, if known;

(viii) the efforts, if any, which were made prior to the filing of the petition to prevent any removal of the child from the home and if such efforts were not made, the reasons such efforts were not made; and

(ix) the efforts, if any, which were made prior to the filing of the petition to allow the child to return or remain safely home, and if such efforts were not made, the reasons such efforts were not made.

(2) The petition shall contain a notice in conspicuous print providing that if the child remains in foster care for fifteen of the most recent twenty-two months, the agency may be required by law to file a petition to terminate parental rights.

(d) Service of summons. (1) Upon the filing of a petition under this article, if a living parent, caretaker or interested adult is identified in the petition, the court shall cause a copy of the petition and a summons to be issued the same day the petition is filed, requiring such parent, caretaker or interested adult to appear in court on the return date to answer the petition. If the court deems a person a party to the proceeding pursuant to subdivision (c) of section one thousand ninety-four of this article and if such person is not before the court, the court shall cause a copy of the petition and a summons requiring such person to appear in court on the return date be served on such person. **If the commissioner of social services has not originated the proceedings, the court shall cause a copy of the petition and summons to be served upon the commissioner of social services requiring that such commissioner or his or her designee appear in court on the return date.**

(2) Service of a summons and petition under this article shall be made by delivery of a true copy thereof to the person summoned at least twenty-four hours before the time stated therein for appearance.

(3) The court may send process without the state in the same manner and with the same effect as process sent within the state in the exercise of personal jurisdiction over any person subject to the jurisdiction of the court under section three hundred one or three hundred two of the civil practice law and rules, notwithstanding that such person is not a resident or domiciliary of the state. Where service is effected outside of the state of New York on a parent, caretaker, interested adult or person made a party to the proceeding pursuant to subdivision (c) of section one thousand ninety-four of this article and such person defaults by failing to appear to answer the petition, the court may on its own motion, or upon application of any party or the attorney for the child proceed to a hearing pursuant to section one thousand ninety-five of this article.

(4) If after reasonable effort, personal service is not made, the court may at any stage in the proceedings make an order providing for substituted service in the manner provided for substituted service in civil process in courts of record.

§ 2. Clauses (A) and (B) of subparagraph (iii) of paragraph 2 of subdivision (a) of section 1094 of the family court act, clause (A) as amended by chapter 3 of the laws of 2012 and clause (B) as added by chapter 605 of the laws of 2011, are amended to read as follows:

(A) direct the [~~petitioner~~] **commissioner of social services** to investigate whether there are any parents, caretakers or interested adults not named in the petition or any other relatives or other suitable persons with whom the child may safely reside and, if so, direct the child to reside temporarily in their care; and

(B) if a relative or other suitable person seeks approval to care for the child as a foster parent, direct the [~~petitioner~~] **commissioner of social services** to commence an investigation into the home of such relative and thereafter approve such relative or other suitable person, if qualified, as a foster parent; provided, however, that if such home is found to be unqualified for approval, the petitioner shall report such fact to the court forthwith and, in the case of a relative who seeks approval to care for the child as a foster parent, the relative may proceed in accordance with section one thousand twenty-eight-a of this act.

§ 3. This act shall take effect immediately.