STATE OF NEW YORK

2075

2021-2022 Regular Sessions

IN SENATE

January 19, 2021

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

AN ACT to amend the family court act and a chapter of the laws of 2020 amending the family court act, relating to the placement of a former foster care youth during a certain state of emergency, as proposed in legislative bills numbers S.8834 and A.10581-B, in relation to placement without a motion and motions being heard and determined on an expedited basis and in relation to the effectiveness thereof

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

Section 1. Subdivision (e) of section 1055 of the family court act, as amended by a chapter of the laws of 2020 amending the family court act, relating to the placement of a former foster care youth during a certain state of emergency, as proposed in legislative bills numbers S.8834 and A.10581-B, is amended to read as follows:

(e) (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 may make a motion pursuant to 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 of subdivision (a) of section one thousand ninety-one of this act.

(ii) Provided, 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[~~, a~~]**:**

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

LBD07142-01-1

(A) 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 section one thousand ninety-one of this act may:

(1) make a motion pursuant to 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 which shall be heard and determined on an expedited basis; or

(2) request 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 section one thousand ninety-one of this act [~~and~~].

(B) To the extent federally allowable, any requirement to enroll in and attend a vocational or educational program shall be waived for the duration of [~~the~~] such state of emergency[~~; provided further, however, that during a~~].

(C) During such state of emergency, the local commissioner of social services or other officer, board or department authorized to receive children as public charges shall be authorized to place such former foster care youth requesting to return to foster care placement[~~; and provided further, however, that the local commissioner of social services or other officer, board or department authorized to receive children as public charges~~] without obtaining prior court approval and shall[~~, when determining whether to return such former foster care youth to foster care placement, take into consideration the factors the court would take into consideration upon making such a determination to return a child to foster care placement pursuant to section one thousand ninety-one of this act~~] grant that request upon a determination that the youth has met the requirements of subdivision (a) of section one thousand ninety-one of this act. Upon placement of a former foster care youth pursuant to this paragraph, the agency shall file a motion for judicial approval of the placement pursuant to section one thousand ninety-one of this act and to schedule the next permanency hearing.

(D) To the extent a former foster care youth is denied the request to return to the custody of the local commissioner of social services, or other board or department authorized to receive children as public charges pursuant to this paragraph, [~~the~~] nothing in this paragraph shall preclude such youth [~~shall still have the opportunity to file~~] from subsequently filing a motion as authorized pursuant to section one thousand ninety-one of this act, and the family court shall hear and determine such motion on an expedited basis.

§ 2. The opening paragraph of section 1091 of the family court act, as amended by a chapter of the laws of 2020 amending the family court act, relating to the placement of a former foster care youth during a certain state of emergency, as proposed in legislative bills numbers S.8834 and A.10581-B, is amended to read as follows:

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, may be made by such former foster care youth, or by a local social services official 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 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 eighteenth 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 [~~the~~] **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**.

§ 3. Section 3 of a chapter of the laws of 2020 amending the family court act, relating to the placement of a former foster care youth during a certain state of emergency, as proposed in legislative bills numbers S.8834 and A.10581-B, is amended to read as follows:

§ 3. This act shall take effect immediately **and shall expire on the same date and in the same manner as 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 when upon such date the provisions of this act shall be deemed repealed; provided, however, that:**

a. any request by 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 section 1091 of the family court 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 that has been received but not finally decided by such date shall be determined in accordance with the provisions of this act; and

b. effective immediately, the office of children and family services and the office of court administration are hereby authorized to promulgate such rules and regulations as may be necessary to implement the provisions of this act on an emergency basis.

§ 4. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2020 amending the family court act, relating to the placement of a former foster care youth during a certain state of emergency, as proposed in legislative bills numbers S.8834 and A.10581-B, takes effect.