

# 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:

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

6 (e) (i) No placement may be made or continued under this section  
7 beyond the child's eighteenth birthday without his or her consent and in  
8 no event past his or her twenty-first birthday. However, a former foster  
9 care youth under the age of twenty-one who was previously discharged  
10 from foster care due to a failure to consent to continuation of place-  
11 ment may make a motion pursuant to section one thousand ninety-one of  
12 this act to return to the custody of the local commissioner of social  
13 services or other officer, board or department authorized to receive  
14 children as public charges. In such motion, the youth must consent to  
15 enrollment in and attendance at a vocational or educational program in  
16 accordance with paragraph two of subdivision (a) of section one thousand  
17 ninety-one of this act.

18 (ii) Provided, however, that during the state of emergency declared  
19 pursuant to Executive Order 202 of 2020, or any extension or subsequent  
20 executive order issued in response to the novel coronavirus (COVID-19)  
21 pandemic[~~-a~~]:

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

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1 (A) A former foster care youth under the age of twenty-one who was  
2 previously discharged from foster care due to a failure to consent to  
3 continuation of placement pursuant to section one thousand ninety-one of  
4 this act may:

5 (1) make a motion pursuant to section one thousand ninety-one of this  
6 act to return to the custody of the local commissioner of social  
7 services or other officer, board or department authorized to receive  
8 children as public charges which shall be heard and determined on an  
9 expedited basis; or

10 (2) request to return to the custody of the local commissioner of  
11 social services or other officer, board or department authorized to  
12 receive children as public charges without making a motion pursuant to  
13 section one thousand ninety-one of this act [and].

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

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

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

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

48 A motion to return a former foster care youth under the age of twen-  
49 ty-one, who was discharged from foster care due to a failure to consent  
50 to continuation of placement, to the custody of the local commissioner  
51 of social services or other officer, board or department authorized to  
52 receive children as public charges, may be made by such former foster  
53 care youth, or by a local social services official upon the consent of  
54 such former foster care youth, if there is a compelling reason for such  
55 former foster care youth to return to foster care; provided however,  
56 that the court shall not entertain a motion filed after twenty-four

1 months from the date of the first final discharge that occurred on or  
2 after the former foster care youth's eighteenth birthday; provided  
3 further, however, that during the state of emergency declared pursuant  
4 to Executive Order 202 of 2020 or any extension or subsequent executive  
5 order issued in response to the novel coronavirus (COVID-19) pandemic,  
6 such motion shall be heard and determined on an expedited basis;  
7 provided further, a former foster care youth shall be entitled to return  
8 to the custody of the local commissioner of social services or other  
9 officer, board or department authorized to receive children as public  
10 charges without making a motion pursuant to this section and, to the  
11 extent federally allowable, any requirement to enroll in and attend an  
12 educational or vocational program shall be waived for the duration of  
13 [~~the~~] such state of emergency. Subsequent to a former foster youth's  
14 return to placement without making a motion, as authorized under this  
15 section during the state of emergency declared pursuant to Executive  
16 Order 202 of 2020 or any extension or subsequent executive order issued  
17 in response to the novel coronavirus (COVID-19) pandemic, nothing herein  
18 shall prohibit the local social services district from filing a motion  
19 for requisite findings needed to subsequently claim reimbursement under  
20 Title IV-E of the federal social security act to support the youth's  
21 care, and the family court shall hear and determine such motions on an  
22 expedited basis.

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

27 § 3. This act shall take effect immediately and shall expire on the  
28 same date and in the same manner as the state of emergency declared  
29 pursuant to executive order 202 of 2020 or any extension or subsequent  
30 executive order issued in response to the novel coronavirus (COVID-19)  
31 pandemic when upon such date the provisions of this act shall be deemed  
32 repealed; provided, however, that:

33 a. any request by a former foster care youth under the age of twenty-  
34 one who was previously discharged from foster care due to a failure to  
35 consent to continuation of placement pursuant to section 1091 of the  
36 family court act to return to the custody of the local commissioner of  
37 social services or other officer, board or department authorized to  
38 receive children as public charges that has been received but not final-  
39 ly decided by such date shall be determined in accordance with the  
40 provisions of this act; and

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

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