

STATE OF NEW YORK

6074--A

Cal. No. 126

2021-2022 Regular Sessions

IN SENATE

April 5, 2021

Introduced by Sens. SALAZAR, BIAGGI, GAUGHRAN -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Finance -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the family court act, in relation to expanding the right to assistance of counsel to include petitioner kinship caregivers in custody and guardianship proceedings and respondents in guardianship proceedings

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

1 Section 1. Subdivision (a) of section 262 of the family court act, as
2 added by chapter 682 of the laws of 1975, the opening paragraph as
3 amended by section 3 of part A of chapter 3 of the laws of 2005, para-
4 graphs (i) and (iv) as amended and paragraph (ix) as added by chapter 3
5 of the laws of 2012, paragraph (ii) as amended by chapter 693 of the
6 laws of 1981, paragraph (iii) as amended by chapter 666 of the laws of
7 1976, and paragraph (viii) as added by chapter 456 of the laws of 1978,
8 is amended to read as follows:
9 (a) Each of the persons described below in this subdivision has the
10 right to the assistance of counsel. When such person first appears in
11 court, the judge shall advise such person before proceeding that he or
12 she has the right to be represented by counsel of his or her own choos-
13 ing, of the right to have an adjournment to confer with counsel, and of
14 the right to have counsel assigned by the court in any case where he or
15 she is financially unable to obtain the same:

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

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1 (i) the respondent in any proceeding under article ten or ten-A of
2 this act and the petitioner in any proceeding under part eight of arti-
3 cle ten of this act;

4 (ii) the petitioner and the respondent in any proceeding under article
5 eight of this act;

6 (iii) the respondent in any proceeding under part three or four of
7 article six of this act;

8 (iv) the parent or person legally responsible, foster parent, or other
9 person having physical or legal custody of the child in any proceeding
10 under article ten or ten-A of this act or section three hundred fifty-
11 eight-a, three hundred eighty-four or three hundred eighty-four-b of the
12 social services law, and a non-custodial parent or grandparent served
13 with notice pursuant to paragraph (e) of subdivision two of section
14 three hundred eighty-four-a of the social services law;

15 (v) the parent of any child seeking custody or contesting the substan-
16 tial infringement of his or her right to custody of such child, in any
17 proceeding before the court in which the court has jurisdiction to
18 determine such custody;

19 (vi) any person acting as a parent of a child, who is seeking custody
20 or guardianship of such child under part three or four of article six of
21 this act, and who is a kinship caregiver of such child. For the purposes
22 of this paragraph the term kinship caregiver shall mean any person
23 described under subdivision twenty-two of section three hundred seven-
24 ty-one of the social services law;

25 (vii) any person in any proceeding before the court in which an order
26 or other determination is being sought to hold such person in contempt
27 of the court or in willful violation of a previous order of the court,
28 except for a contempt which may be punished summarily under section
29 seven hundred fifty-five of the judiciary law;

30 [~~(vii)~~] (viii) the parent of a child in any adoption proceeding who
31 opposes the adoption of such child[~~+~~];

32 [~~(viii)~~] (ix) the respondent in any proceeding under article five of
33 this act in relation to the establishment of paternity[~~+~~]; and

34 [~~(ix)~~] (x) in a proceeding under article ten-C of this act:

35 (1) a parent or caretaker as such terms are defined in section one
36 thousand ninety-two of this act;

37 (2) an interested adult as such term is defined in section one thou-
38 sand ninety-two of this act provided that:

39 (A) the child alleged to be destitute in the proceeding held pursuant
40 to article ten-C of this act was removed from the care of such inter-
41 ested adult;

42 (B) the child alleged to be destitute in the proceeding held pursuant
43 to article ten-C of this act resides with the interested adult; or

44 (C) the child alleged to be destitute in the proceeding held pursuant
45 to article ten-C of this act resided with such interested adult imme-
46 diately prior to the filing of the petition under article ten-C of this
47 act;

48 (3) any interested adult as such term is defined in section one thou-
49 sand ninety-two of this act or any person made a party to the article
50 ten-C proceeding pursuant to subdivision (c) of section one thousand
51 ninety-four of this act for whom the court orders counsel appointed
52 pursuant to subdivision (d) of section one thousand ninety-four of this
53 act.

54 § 2. Paragraph 1 of subdivision (a) of section 1094 of the family
55 court act, as amended by chapter 3 of the laws of 2012, is amended to
56 read as follows:

1 (1) appoint an attorney to represent the child in accordance with
2 section two hundred forty-nine of this act, and appoint an attorney to
3 represent a parent, caretaker or interested adult in accordance with
4 paragraph [~~(ix)~~] (x) of subdivision (a) of section two hundred sixty-two
5 of this act, if he or she is financially unable to obtain counsel;

6 § 3. This act shall take effect on the first of April next succeeding
7 the date on which it shall have become a law.