

STATE OF NEW YORK

3588

2023-2024 Regular Sessions

IN ASSEMBLY

February 3, 2023

Introduced by 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:

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

5 § 1093. Originating proceedings. (a) Filing of the petition. [~~Only a~~
6 ~~commissioner of social services may originate a proceeding under this~~
7 ~~article.~~] (1) A proceeding under this article may be originated by the
8 filing of a petition alleging that the child is a destitute child as
9 defined by section one thousand ninety-two of this article. [~~A commis-~~
10 ~~sioner of social services, who accepts the care and custody of a child~~
11 ~~appearing to be a destitute child, shall provide for such child as~~
12 ~~authorized by law, including but not limited to section three hundred~~
13 ~~ninety-eight of the social services law, and shall file a petition~~
14 ~~pursuant to this section within fourteen days upon accepting the care~~
15 ~~and custody of such child.]~~

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

18 (A) a commissioner of social services;

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

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

22 (ii) A person seeking to file a petition on the court's direction
23 pursuant to clause (C) of subparagraph (i) of this paragraph shall have
24 access to the court for the purpose of making an ex parte application
25 therefor. Nothing in this section shall be intended to prevent a family

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

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1 court judge from requiring such person to first report to an appropriate
2 child protective agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

41 (d) Service of summons. (1) Upon the filing of a petition under this
42 article, if a living parent, caretaker or interested adult is identified
43 in the petition, the court shall cause a copy of the petition and a
44 summons to be issued the same day the petition is filed, requiring such
45 parent, caretaker or interested adult to appear in court on the return
46 date to answer the petition. If the court deems a person a party to the
47 proceeding pursuant to subdivision (c) of section one thousand ninety-
48 four of this article and if such person is not before the court, the
49 court shall cause a copy of the petition and a summons requiring such
50 person to appear in court on the return date be served on such person.

51 If the commissioner of social services has not originated the
52 proceedings, the court shall cause a copy of the petition and summons to
53 be served upon the commissioner of social services requiring that such
54 commissioner or his or her designee appear in court on the return date.

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

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

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

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

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

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

40 § 3. This act shall take effect immediately.