

# STATE OF NEW YORK

5394

2023-2024 Regular Sessions

## IN ASSEMBLY

March 10, 2023

Introduced by M. of A. JOYNER -- read once and referred to the Committee on Judiciary

AN ACT to amend the family court act and the social services law, in relation to establishing procedures regarding orders of post-termination visitation and/or contact between a child and such child's parent

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

1 Section 1. Section 634 of the family court act, as amended by chapter  
2 666 of the laws of 1976, is amended to read as follows:

3 § 634. Commitment of guardianship and custody; further orders. The  
4 court may enter an order under section six hundred thirty-one of this  
5 part committing the guardianship and custody of the child to the peti-  
6 tioner on such conditions, if any, as it deems proper, including but not  
7 limited to, an order of post-termination visitation and/or contact  
8 pursuant to section three hundred eighty-four-b of the social services  
9 law.

10 § 2. Section 384-b of the social services law is amended by adding  
11 five new subdivisions 14, 15, 16, 17 and 18 to read as follows:

12 14. (a) Upon application by any party to a proceeding under this  
13 section, (i) the court shall order post-termination visitation and/or  
14 contact between the child and such child's parent who is a party to such  
15 proceeding on such terms and conditions as may be agreed upon by the  
16 parent, the child, and the foster parent or authorized agency prior to  
17 the entry of an order committing the guardianship and custody of the  
18 child; or (ii) if any party does not consent, the court may order post-  
19 termination visitation and/or contact between the child and the child's  
20 parent after a hearing at which the court has determined that (A) the  
21 party's consent is being unreasonably withheld; and (B) post-termination  
22 visitation and/or contact would be in the best interest of the child.

23 (b) The hearing to determine whether the court should enter an order  
24 of post-termination visitation and/or contact shall be held either (i)

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

LBD04475-01-3

1 concurrently with a dispositional hearing held in the proceedings to  
2 terminate the parent's rights pursuant to this section; or (ii) if no  
3 dispositional hearing is held, subsequent to the close of the fact-find-  
4 ing hearing on the underlying petition to terminate the parent's rights  
5 and prior to the court's entry of an order committing the guardianship  
6 and custody of the child. The court shall not hold such a hearing at  
7 any other time.

8 (c) Parents and children who are parties to a termination proceeding  
9 under article six of the family court act or this section, as well as  
10 such child's foster parents, or, in the case of a child who is not in  
11 the care of a foster parent, the authorized agency, shall have notice of  
12 and standing to participate in the best interest post-termination visi-  
13 tation and/or contact hearing.

14 (d) The applicant shall have the burden of proof that (i) the opposing  
15 party's consent has been unreasonably withheld; and (ii) post-termina-  
16 tion visitation and/or contact is in the child's best interest.

17 (e) If the application for post-termination contact is denied after  
18 this hearing, the applicant shall not have standing to bring the same  
19 application in any other proceeding regarding the same child. However,  
20 if the court grants any visitation and/or contact, an application to  
21 modify the order, upon a showing of substantial change in circumstances,  
22 may still be brought, pursuant to subdivision fifteen of this section.

23 (f) The court shall have discretion, depending on the best interests  
24 of the child, to determine the nature of any post-termination visitation  
25 and/or contact.

26 (g) Notwithstanding the provisions of paragraph (a) of this subdivi-  
27 sion, in no event shall an order of post-termination visitation and/or  
28 contact be entered where a court has entered a finding pursuant to para-  
29 graph (a) or (b) of subdivision eight of this section that a parent  
30 severely or repeatedly abused the child, except where a court has deter-  
31 mined that the parent seeking post-termination visitation and/or contact  
32 was not the perpetrator of such severe or repeated abuse of such child.

33 (h) If the child is over fourteen years of age, the consent of such  
34 child to post-termination visitation and/or contact is required.

35 (i) The court in its order shall indicate such person or persons who  
36 were given notice of the proceeding and whether such person or persons  
37 appeared.

38 15. All parties to a post-termination visitation and/or contact order  
39 entered pursuant to subdivision fourteen of this section, as well as any  
40 person who subsequently becomes the child's legal guardian, custodian or  
41 adoptive parent, may move the court to enforce or modify such order.  
42 Upon motion for modification by any such party, (i) the court shall  
43 enter an order modifying such post-termination visitation and/or contact  
44 order on such terms and conditions as may be agreed upon by the parties,  
45 or, (ii) if any party does not consent, the court may enter an order  
46 modifying such post-termination visitation and/or contact order, after a  
47 hearing at which the court has determined that (A) the party's consent  
48 is being unreasonably withheld; and (B) the modification would be based  
49 on a showing of a substantial change in circumstances and the best  
50 interests of the child.

51 16. Nothing in subdivision fourteen or fifteen of this section shall  
52 be construed to limit the rights of half-siblings or siblings to seek  
53 contact pursuant to subdivision nine of this section or section seven-  
54 ty-one of the domestic relations law following a termination of parental  
55 rights or adoption.

1 17. The failure of an authorized agency or a child's foster parent or  
2 any other person who subsequently becomes the child's legal guardian,  
3 custodian or adoptive parent to comply with the terms of the order of  
4 post-termination visitation and/or contact shall not constitute a basis  
5 for invalidating either the order committing the guardianship and custo-  
6 dy of the child to the petitioner or any subsequent order of adoption  
7 regarding such child.

8 18. Unless a stay of adoption proceedings is granted by a judge of the  
9 family court or appellate court, an appeal from any order regarding the  
10 application for post-termination visitation and/or contact shall not  
11 provide a basis for delaying the finalization of a child's adoption.

12 § 3. This act shall take effect on the one hundred eightieth day after  
13 it shall have become a law.