§ 1091. Motion to return to foster care placement. (a) For purposes of this article:

(1) "Former foster care youth" shall mean a youth:

(i) who has attained the age of eighteen but is under the age of twenty-one and who had been discharged from a foster care setting on or after:

(A) attaining the age of eighteen due to a failure to consent to continuation in foster care; or

(B) attaining the age of sixteen but who is or is likely to be homeless unless returned to foster care; and

(ii)(A) placed in foster care with a local social services district or authorized agency, as applicable, pursuant to article three, seven, ten, ten-A or ten-C of this act or section three hundred fifty-eight-a of the social services law; or

(B) freed for adoption in accordance with section six hundred thirty-one of this act or section three hundred eighty-three-c, three hundred eighty-four or three hundred eighty-four-b of the social services law but has not yet been adopted; or

(C) placed with the office of children and family services as a juvenile delinquent for a non-secure level of care pursuant to article three of this act.

(2) "Foster care setting" shall not include placements in:

(i) (A) a limited secure or secure level of care with the office of children and family services; or

(B) a limited secure level of care where the placement was made in a county that has an approved "close to home" program pursuant to section four hundred four of the social services law.

(ii) Provided however, a youth who was previously placed in a limited secure or secure level of care but was subsequently transferred to a non-secure level of care may still be eligible to re-enter if such youth was ultimately released from a non-secure setting.

(b) A motion to return a former foster care youth to the custody of the social services district from which the youth was most recently discharged, or, in the case of a youth previously placed with the office of children and family services, to be placed in the custody of the social services district of the child's residence, or, in the case of a child freed for adoption, the social services district or authorized

agency into whose custody and guardianship such child has been placed, may be made by such former foster care youth, or by the applicable official of the local social services district, authorized agency or the office of children and family services 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.

(c) (1) With respect to a former foster care youth discharged on or after his or her eighteenth birthday, 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.

(2) With respect to a former foster care youth discharged prior to his or her eighteenth birthday, the court shall not entertain a motion filed after his or her twentieth birthday; provided further, however, that during the state of emergency declared pursuant to Executive Order 202 of 2020, or any extension or subsequent order issued, such former foster 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 in accordance with paragraph one of this subdivision 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 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.

(d) A motion made pursuant to this article by the applicable official of the local social services district, authorized agency or the office of children and family services shall be made by order to show cause. Such motion shall show by affidavit or other evidence that:

(1) the former foster care youth has no reasonable alternative to

foster care;

(2) the former foster care youth consents to enrollment in and attendance at an appropriate educational or vocational program, unless evidence is submitted that such enrollment or attendance is unnecessary or inappropriate, given the particular circumstances of the youth;

(3) re-entry into foster care is in the best interests of the former foster care youth;

(4) the former foster care youth consents to the re-entry into foster care; and

(5) in the case of a former foster youth discharged from foster care on or after attaining the age of sixteen, the youth is or is likely to be homeless unless returned to foster care.

(e) A motion made pursuant to this article by a former foster care youth shall be made by order to show cause on ten days notice to the applicable official of the local social services district, authorized agency or the office of children and family services. Such motion shall show by affidavit or other evidence that:

(1) the requirements outlined in paragraphs one, two, three, four and, if applicable, paragraph five of subdivision (d) of this section are met; and

(2) (i) the applicable official of the local social services district, authorized agency or the office of children and family services consents to the re-entry of such former foster care youth, or

(ii) the applicable official of the local social services district, authorized agency or the office of children and family services refuses to consent to the re-entry of such former foster care youth.

(f) (1) If at any time during the pendency of a proceeding brought pursuant to this article, the court finds a compelling reason that it is in the best interests of the former foster care youth to be returned immediately to the custody of the applicable local commissioner of social services or official of the applicable authorized agency or the office of children and family services, pending a final decision on the motion, the court may issue a temporary order returning the youth to the custody of such local commissioner of social services or other official.

(2) Where the applicable official of the local social services district, authorized agency or the office of children and family services has refused to consent to the re-entry of a former foster care

youth, the court shall grant a motion made pursuant to subdivision (e) of this section if the court finds and states in writing that the refusal is unreasonable. For purposes of this article, a court shall find that a refusal to allow a former foster care youth to re-enter care is unreasonable if:

(i) the youth has no reasonable alternative to foster care;

(ii) the youth consents to enrollment in and attendance at an appropriate educational or vocational program, unless the court finds a compelling reason that such enrollment or attendance is unnecessary or inappropriate, given the particular circumstances of the youth; and

(iii) re-entry into foster care is in the best interests of the former foster care youth.

(3) Upon making a determination on a motion filed pursuant to this article, where a motion has previously been granted pursuant to this article, in addition to the applicable findings required by this article, the court shall grant the motion to return a former foster care youth to the custody of the applicable local commissioner of social services or official of the applicable authorized agency or the office of children and family services, only:

(i) upon a finding that there is a compelling reason for such former foster care youth to return to care;

(ii) if the court has not previously granted a subsequent motion for such former foster care youth to return to care pursuant to this paragraph; and

(iii) upon consideration of the former foster care youth's compliance with previous orders of the court, including the youth's previous participation in an appropriate educational or vocational program, if applicable.