§ 383-c. Guardianship and custody of children in foster care. 1. Method. For the purposes of this section, a child in foster care shall mean a child in the care and custody of an authorized agency pursuant to section three hundred eighty-four-a of this title or article three, seven or ten of the family court act. The guardianship of the person and the custody of a child in foster care under the age of eighteen years may be committed to an authorized agency by a written instrument which shall be known as a surrender, and signed:

(a) if both parents shall then be living, by the parents of such child, or by the surviving parent, if either parent of such child be dead;

(b) if either one of such parents shall have for a period of six months then next preceding abandoned such child as set forth in section three hundred eighty-four-b of this title, by the other of such parents;

(c) if such child is born out of wedlock, by the mother of such child, and by the father of such child, if such father's consent would be required for the child's adoption, pursuant to section one hundred eleven of the domestic relations law;

(d) if both parents of such child are dead, or if such child is born out of wedlock and the mother of such child is dead, by the guardian of the person of such child lawfully appointed, with the approval of the court or officer which appointed such guardian to be entered of record.

2. Terms. (a) Such guardianship shall be in accordance with the provisions of this article and the instrument shall be upon such terms and subject to such conditions as may be agreed upon by the parties thereto and shall comply with subdivision five of this section; provided, however, that an authorized agency shall not accept a surrender instrument conditioned upon adoption by a particular person, unless such person is a certified or approved foster parent, where the permanency plan for the child is for the child to be adopted by that person or the agency has fully investigated and approved such person as an adoptive parent in accordance with applicable statute and regulations. No such agency shall draw or receive money from public funds for the support of any such child except upon the written order or permit of the social services official of the county or city sought to be charged with the support of such child.

(b) If a surrender instrument designates a particular person or persons who will adopt a child, such person or persons, the child's birth parent or parents, the authorized agency having care and custody of the child and the child's attorney, may enter into a written agreement providing for communication or contact between the child and the child's parent or parents on such terms and conditions as may be agreed to by the parties. If a surrender instrument does not designate a particular person or persons who will adopt the child, then the child's birth parent or parents, the authorized agency having care and custody of the child and the child's attorney may enter into a written agreement providing for communication or contact, on such terms and conditions as may be agreed to by the parties. Such agreement also may provide terms and conditions for communication with or contact between the child and the child's biological siblings or half-siblings, if any. If any such sibling or half-sibling is fourteen years of age or older, such terms and conditions shall not be enforceable unless such sibling or half-sibling consents to the agreement in writing. If the court before which the surrender instrument is presented for approval determines that the agreement concerning communication and contact is in the child's best interests, the court shall approve the agreement. If the court does not approve the agreement, the court may nonetheless approve the surrender; provided, however, that the birth parent or parents executing the surrender instrument shall be given the opportunity at that time to withdraw such instrument. Enforcement of any agreement prior to the adoption of the child shall be in accordance with subdivision (b) of section one thousand fifty-five-a of the family court act. Subsequent to the adoption of the child, enforcement of any agreement shall be in accordance with section one hundred twelve-b of the domestic relations law.

3. Judicial surrenders. (a) A surrender of a child to an authorized agency for the purpose of adoption may be executed and acknowledged before a judge of the family court or a surrogate in this state. If the child being surrendered is in foster care as a result of a proceeding before the family court pursuant to article ten or ten-A of the family court act or section three hundred fifty-eight-a of this chapter, the surrender shall be executed and acknowledged before the family court

that exercised jurisdiction over such proceeding and, shall be assigned, wherever practicable, to the judge who last presided over such proceeding. A surrender executed and acknowledged before a court in another state shall satisfy the requirements of this section if it is executed by a resident of the other state before a court of record which has jurisdiction over adoption proceedings in that state, and a certified copy of the transcript of that proceeding, showing compliance with paragraph (b) of this subdivision, is filed as part of the adoption proceeding in this state.

(b) Before a judge or surrogate approves a judicial surrender, the judge or surrogate may order that notice of the surrender proceeding be given to such persons as the judge or surrogate may, in his or her discretion, prescribe. At the time that a parent appears before a judge or surrogate to execute and acknowledge a surrender, the judge or surrogate shall inform such parent of the right to be represented by legal counsel of the parent's own choosing and of the right to obtain supportive counseling and of any right to have counsel assigned pursuant to section two hundred sixty-two of the family court act, section four hundred seven of the surrogate's court procedure act, or section thirty-five of the judiciary law. The judge or surrogate also shall inform the parent of the consequences of such surrender, including informing such parent that the parent is giving up all rights to have custody, visit with, speak with, write to or learn about the child, forever, unless the parties have agreed to different terms pursuant to subdivision two of this section, or, if the parent registers with the adoption information register, as specified in section forty-one hundred thirty-eight-d of the public health law, that the parent may be contacted at any time after the child reaches the age of eighteen years, but only if both the parent and the adult child so choose. The court shall determine whether the terms and conditions agreed to by the parties pursuant to subdivision two of this section are in the child's best interests before approving the surrender. The judge or surrogate shall inform the parent that where a surrender containing conditions has been executed, the parent is obligated to provide the authorized agency with a designated mailing address, as well as any subsequent changes in such address, at which the parent may receive notices regarding any substantial failure of a material condition, unless such notification is

expressly waived by a statement written by the parent and appended to or included in such instrument. The judge or surrogate also shall inform the parent that the surrender shall become final and irrevocable immediately upon its execution and acknowledgment. The judge or surrogate shall give the parent a copy of such surrender upon the execution thereof.

4. Extra-judicial surrenders. (a) In any case where a surrender is not executed and acknowledged before a judge or surrogate pursuant to subdivision three of this section, such surrender shall be executed and acknowledged by the parent, in the presence of at least two witnesses, before a notary public or other officer authorized to take proof of deeds. At least one witness shall be an employee of an authorized agency trained, in accordance with the regulations of the department of children and family services, to receive surrenders. At least one witness shall be a person who is either a licensed master social worker, licensed clinical social worker or an attorney and who is not an employee, volunteer, consultant or agent of or attorney for the authorized agency to which the child is being surrendered. The commissioner of the office of children and family services, after consultation with the chief administrator of the courts, shall promulgate standards to help ensure the impartial selection and independence of such witnesses. Any witness may, if so commissioned, serve as notary under this subdivision.

(b) The authorized agency to which the child was surrendered shall file an application for approval of the extra-judicial surrender with the court in which the adoption proceeding is expected to be filed or, if not known, the family or surrogate's court in the county in which the agency has its principal office. If the child being surrendered is in foster care as a result of a proceeding before the family court pursuant to article ten or ten-A of the family court act or section three hundred fifty-eight-a of this chapter, the application shall be filed in the family court that exercised jurisdiction over such proceeding and, shall be assigned, wherever practicable, to the judge who last presided over such proceeding. The application shall be filed no later than fifteen days after execution of such surrender. The application shall be accompanied by affidavits from all the witnesses before whom the

surrender was executed and acknowledged as provided for in paragraph (a) of this subdivision, stating:

(i) the date, time and place where the surrender was executed and acknowledged;

(ii) that the parent was provided with a copy of the surrender;

(iii) that the surrender was read in full to the parent in his or her principal language and the parent was given an opportunity to ask questions and obtain answers regarding the nature and consequences of the surrender, including the consequences of, and procedures to be followed in, cases of a substantial failure of a material condition, if any, contained in the surrender instrument and the obligation to provide the authorized agency with a designated mailing address, as well as any subsequent changes in such address, at which the parent may receive notices regarding any substantial failure of a material condition, unless such notification is expressly waived by a statement written by the parent and appended to or included in such instrument; and

(iv) that the parent executed and acknowledged the surrender.

(c) The authorized agency to which a child is surrendered pursuant to this subdivision must affix an affidavit to the application, by an employee responsible for providing or arranging supportive counseling, which specifies:

(i) when supportive counseling was offered to the parent by the authorized agency;

(ii) whether the parent accepted the offer of supportive counseling; and

(iii) if accepted, when supportive counseling was provided and the nature of such supportive counseling.

(d) Before a judge or surrogate approves an extra-judicial surrender, the judge or surrogate shall order notice to be given to the person who executed the surrender and to such other persons as the judge or surrogate may, in his or her discretion, prescribe. No person who has received such notice and been afforded an opportunity to be heard may challenge the validity of a surrender approved pursuant to this subdivision in any other proceeding. Nothing in this section shall be deemed to dispense with the consent to adopt if otherwise required of any person who has not executed the surrender.

(e) The agency to which the child is surrendered promptly shall notify

such court of any correspondence or communication received from the parent or a person on the parent's behalf subsequent to the execution of the surrender and prior to a final order of adoption of the child, if such correspondence or communication could reasonably indicate the parent's wish to revoke the surrender.

(f) The court shall enter an order either approving or disapproving the surrender. If the court disapproves the surrender, the surrender shall be deemed a nullity and without force or effect, and the court may direct that any subsequent surrender shall be executed only before the court in accordance with subdivision three of this section.

5. Instrument. (a) There shall be a form of instrument for a judicial surrender and a form of instrument for an extra-judicial surrender.

(b) The instrument for a judicial surrender and the instrument for an extra-judicial surrender shall be in a form prescribed by the commissioner after consultation with the chief administrator of the courts and shall state in plain language in conspicuous bold print on the first page:

(i) that the parent has the right, before signing the surrender, to speak to a lawyer of her or his own choosing and any other person she or he wishes; to have that lawyer and any other person present with her or him at the time of the signing of the surrender; and has the right to ask the court to appoint a lawyer free of charge if the parent cannot afford to hire one; and has the right to have supportive counseling;

(ii) that the parent is giving up all rights to have custody, visit with, speak with, write to or learn about the child, forever, unless the parties have agreed to different terms pursuant to subdivision two of this section, and unless such terms are written in the surrender, or, if the parent registers with the adoption information register, as specified in section forty-one hundred thirty-eight-d of the public health law, that the parent may be contacted at anytime after the child reaches the age of eighteen years, but only if both the parent and the adult child so choose;

(iii) that the child will be adopted without the parent's consent and without further notice to the parent, and will be adopted by any person that the agency chooses, unless the surrender paper contains the name of the person or persons who will be adopting the child; and

(iv) that the parent cannot be forced to sign the surrender paper, and cannot be punished if he or she does not sign the paper; and would not be subject to any penalty for refusing to sign the surrender.

(c) A surrender instrument for a judicial surrender also shall state in plain language in conspicuous bold print at the beginning thereof that the surrender becomes final and irrevocable immediately upon execution and acknowledgement, and that the parent cannot bring a case in court to revoke the surrender or to regain custody of the child. Where the parties have agreed that the surrender shall be subject to conditions pursuant to subdivision two of this section, the instrument shall further state in plain language that:

(i) the authorized agency shall notify the parent, unless such notice is expressly waived by a statement written by the parent and appended to or included in such instrument, the attorney for the child and the court that approved the surrender within twenty days of any substantial failure of a material condition of the surrender prior to the finalization of the adoption of the child; and

(ii) except for good cause shown, the authorized agency shall file a petition on notice to the parent unless notice is expressly waived by a statement written by the parent and appended to or included in such instrument and the child's attorney in accordance with section one thousand fifty-five-a of the family court act within thirty days of such failure, in order for the court to review such failure and, where necessary, to hold a hearing; provided, however, that, in the absence of such filing, the parent and/or attorney for the child may file such a petition at any time up to sixty days after notification of the failure. Such petition filed by a parent or attorney for the child must be filed prior to the child's adoption; and

(iii) the parent is obligated to provide the authorized agency with a designated mailing address, as well as any subsequent changes in such address, at which the parent may receive notices regarding any substantial failure of a material condition, unless such notification is expressly waived by a statement written by the parent and appended to or included in such instrument.

Nothing in this paragraph shall limit the notice on the instrument with respect to a failure to comply with a material condition of a

surrender subsequent to the finalization of the adoption of the child.

(d) An extra-judicial surrender instrument also shall state in plain language in conspicuous bold print at the beginning thereof that:

(i) the name and address of the court in which the application for approval of the extra-judicial surrender will be filed;

(ii) that a revocation of the surrender will be effective if it is in writing and postmarked or received by the court named in the surrender within forty-five days of the signing of the surrender; and

(iii) that a revocation of the surrender more than forty-five days after its signing will not be effective if the child has been placed in an adoptive home, and the surrender shall be final and irrevocable and the parent cannot revoke the surrender or bring a case in court to revoke the surrender or regain custody of the child, and that the agency will not notify the parent when the child is placed in an adoptive home, and the parent may lose all rights at the end of the forty-five day period without further notice. Where the parties have agreed that the surrender shall be subject to conditions pursuant to subdivision two of this section, the instrument shall further state in plain language that:

(A) the authorized agency shall notify the parent, unless such notice is expressly waived by a statement written by the parent and appended to or included in such instrument, the law guardian for the child and the court that approved the surrender within twenty days of any substantial failure of a material condition of the surrender prior to the finalization of the adoption of the child; and

(B) except for good cause shown, the authorized agency shall file a petition on notice to the parent unless notice is expressly waived by a statement written by the parent and appended to or included in such instrument and law guardian in accordance with section one thousand fifty-five-a of the family court act within thirty days of such failure in order for the court to review such failure and, where necessary, to hold a hearing; provided, however, that, in the absence of such filing, the parent and/or law guardian for the child may file such a petition at any time up to sixty days after notification of the failure. Such petition filed by a parent or law guardian must be filed prior to the adoption of the child; and

(C) the parent is obligated to provide the authorized agency with a designated mailing address, as well as any subsequent changes in such

address, at which the parent may receive notices regarding any substantial failure of a material condition, unless such notice is expressly waived by a statement written by the parent and appended to or included in such instrument.

Nothing in this subparagraph shall limit the notice on the instrument with respect to a failure to comply with a material condition of a surrender subsequent to the finalization of the adoption of the child.

(e) Any surrender instrument subject to the provisions of this section shall include an adoption information registry birth parent registration consent form, stating whether or not such biological parent or parents whose consent is subject to the provisions of this section, consents to the receipt of identifying information by the child to be adopted upon registration with the adoption information registry established by section forty-one hundred thirty-eight-c of the public health law and upon the adoptee reaching the age of eighteen. If such consent is made, it shall be revocable by either of the biological parents at any time. The revocation of the consent by one of the parents shall revoke the consent of both parents. The failure of a biological parent to complete the consent form shall have no effect on the finality of the consent to adoption. A copy of the form required by this subdivision, shall be forwarded to the state adoption information registry for inclusion in the records maintained by such registry. Any fees authorized to be charged by the state adoption registry for filing documentation with such registry shall be waived for the form required by this subdivision.

(f) A surrender shall be recorded in the office of the county clerk in the county where the surrender is executed, or where the principal office of such authorized agency is located, in a book which such county clerk shall provide and shall keep under seal. Such record shall be subject to inspection and examination only as provided in subdivisions three and four of section three hundred seventy-two of this title.

(g) Whenever the term surrender, surrender paper or surrender instrument is used in any law relating to the adoption of children in foster care, it shall mean and refer exclusively to the instrument described herein for the commitment of the guardianship of the person and the custody of a child to an authorized agency by the child's parent, parents or guardian, and in no case shall it be deemed to apply

to any instrument purporting to commit the guardianship of the person and the custody of a child to any person other than an authorized agency, nor shall such term or the provisions of this section be deemed to apply to any instrument transferring the care and custody of a child to an authorized agency pursuant to section three hundred eighty-four-a of this title.

(h) Upon execution of a surrender instrument, the parent executing the surrender shall provide information to the extent known regarding the other parent, any person to whom the surrendering parent had been married at the time of the conception or birth of the child and any other person who would be entitled to consent to the adoption of the child pursuant to subdivision one of section one hundred eleven of the domestic relations law. Such information shall include, but not be limited to, such parent's or person's name, last-known address, social security number, employer's address and any other identifying information. Any information provided pursuant to this paragraph shall be recorded in the uniform case record maintained pursuant to section four hundred nine-f of this article; provided, however, that the failure to provide such information shall not invalidate the surrender.

6. Effect of surrender and revocation. (a) If the court disapproves the surrender pursuant to subdivision four of this section, or if a revocation of an extra-judicial surrender is mailed and postmarked or otherwise delivered to the court named in the surrender within forty-five days of the execution of the surrender, such surrender shall be deemed a nullity, and the child shall be returned to the care and custody of the authorized agency.

(b) If a revocation of an extra-judicial surrender is mailed and postmarked or otherwise delivered to the court named in the surrender more than forty-five days after its execution and the child has not been placed in an adoptive home, such surrender shall be deemed a nullity, and the child shall be returned to the care and custody of the authorized agency. For the purposes of this subdivision, no child shall be deemed to have been placed in the home of adoptive parents unless the fact of such placement, the date thereof, the date of the agreement pertaining thereto and the names and addresses of the adoptive parents shall have been recorded in a bound volume maintained by the agency for

the purpose of recording such information in chronological order. The absence of judicial approval of an extra-judicial surrender shall not revive, extend or toll the period for revocation of such surrender.

(c) In any case in which the authorized agency determines that the persons specified in the surrender will not adopt the child or in any other case of a substantial failure of a material condition prior to the finalization of the adoption of the child, the agency promptly shall notify the parent thereof, unless such notice is expressly waived by a statement written by the parent and appended to or included in such instrument, and shall notify the court and the law guardian for the child within twenty days. In any such case, the authorized agency shall file a petition on notice to the parent unless notice is expressly waived by a statement written by the parent and appended to or included in such instrument and law guardian in accordance with section one thousand fifty-five-a of the family court act, as applicable, within thirty days, except for good cause shown, in order for the court to review such failure and, where necessary, to hold a hearing; provided, however, that, in the absence of such a filing, the parent and/or law guardian for the child may file such a petition at any time up to sixty days after the notification of the failure. Such petition filed by a parent or law guardian must be filed prior to the adoption. Nothing in this paragraph shall limit the rights and remedies, if any, available to the parties and the law guardian with respect to a failure to comply with a material condition of a surrender subsequent to the finalization of the adoption of the child.

(d) Nothing contained in this section shall bar actions or proceedings brought on the ground of fraud, duress or coercion in the execution or inducement of a surrender. No action or proceeding may be maintained by the surrendering parent or guardian for the custody of the surrendered child or to revoke or annul such surrender except as provided herein.

7. Surrenders by persons in foster care. Notwithstanding any other provision of law, a surrender for adoption executed by a parent, parents or guardian who is in foster care shall be executed only before a judge of the family court.

8. Adoption proceeding. (a) Upon the court's order approving the

surrender, the attorney for the petitioning authorized agency shall promptly serve upon persons who have been approved by such agency as the child's adoptive parents, notice of entry of the order approving the surrender and advising such persons that they may commence an adoption proceeding. In accordance with the regulations of the department, the authorized agency shall advise such persons of the procedures necessary for adoption of the child. The authorized agency shall cooperate with such persons in the provision of necessary documentation.

(b) The adoptive parent may commence the adoption proceeding in a court of competent jurisdiction in accordance with subdivision three of section one hundred thirteen or subdivision two of section one hundred fifteen of the domestic relations law, as applicable; provided, however, that in the case of an extra-judicial surrender, such proceeding shall be initiated more than forty-five days after the surrender is executed. Commencement of such a proceeding shall not revive, extend or toll the period for revocation of an extra-judicial surrender pursuant to this section.

9. Intervention. (a) Any person or persons having custody of a child for the purpose of adoption through an authorized agency shall be permitted as a matter of right, as an interested party, to intervene in any proceeding commenced to set aside a surrender purporting to commit a guardianship of the person or custody of a child executed under the provisions of this section. Such intervention may be made anonymously or in the true name of such person.

(b) Any person or persons having custody for more than twelve months through an authorized agency for the purpose of foster care shall be permitted as a matter of right, as an interested party, to intervene in any proceeding commenced to set aside a surrender purporting to commit the guardianship of the person and custody of a child executed under the provisions of this section. Such intervention may be made anonymously or in the true name of such person or persons having custody of the child for the purpose of foster care.

10. Adoption and permanency hearing.

a. Upon acceptance of a judicial surrender or approval of an

extra-judicial surrender pursuant to subdivision three or four of this section, the court shall inquire whether any foster parent or parents with whom the child resides, or any relative of the child, or other person, seeks to adopt such child. If such person or persons do seek to adopt such child, such person or persons may submit, and the court shall accept, all such petitions for the adoption of the child, together with an adoption home study, if any, completed by an authorized agency, or disinterested person as such term is defined in subdivision three of section one hundred sixteen of the domestic relations law. The court shall thereafter establish a schedule for completion of other inquiries and investigations necessary to complete review of the adoption of the child and shall immediately set a schedule for completion of the adoption.

b. Upon acceptance of a judicial surrender or approval of an extra-judicial surrender pursuant to subdivision three or four of this section, the court shall schedule an initial freed child permanency hearing pursuant to section one thousand eighty-nine of the family court act. Subsequent permanency hearings shall be held pursuant to section one thousand eighty-nine of the family court act.

11. Acceptance of surrender. Acceptance of a judicial surrender or approval of an extra-judicial surrender pursuant to this section shall not be construed to terminate any rights of the child to contact his or her siblings. For purposes of this section, "siblings" shall include half-siblings and those who would be deemed siblings or half-siblings but for the surrender, termination of parental rights or death of a parent.