§ 384-a. Transfer of care and custody of children. 1. Method. The care and custody of a child may be transferred by a parent or guardian, and the care of a child may be transferred by any person to whom a parent has entrusted the care of the child, to an authorized agency by a written instrument in accordance with the provisions of this section. Such transfer by a person who is not the child's parent or guardian shall not affect the rights or obligations of the parents or guardian, and such transfer shall be deemed a transfer of the care and custody of the child for the purposes of section three hundred fifty-eight-a of this chapter.

1-a. Prior to accepting a transfer of care and custody, a local social services official shall commence a search to locate any non-respondent parent of the child and shall conduct an immediate investigation to (a) locate relatives of the child, including all of the child's grandparents, all suitable relatives identified by either and any relative identified by a child over the age of five as a relative who plays or has played a significant positive role in his or her life, and to inform them of the opportunity for becoming foster parents or for seeking custody or care of the child, and that the child may be adopted by foster parents if attempts at reunification with the birth parent are not required or are unsuccessful; and to determine whether the child may appropriately be placed with a suitable person related to the child and whether such relative seeks approval as a foster parent pursuant to this chapter for the purposes of providing care for such child, or wishes to provide care and custody for the child until the parent or other person responsible for the care of the child is able to resume custody; and (b) identify minor siblings or half-siblings of the child and to determine whether such siblings or half-siblings have been or are being transferred to the care and custody of such official. Such official shall provide or arrange for the provision of care so as to permit the child and his or her minor siblings or half-siblings to be placed together unless, in the judgment of such official, such placement would be contrary to the best interests of the children; whereupon, such official shall provide or arrange for regular visitation and other forms of regular communication between such children unless, in the judgment of such official, such visitation and communication would be contrary to

the best interests of such children. Placement or regular visitation and communication with siblings or half-siblings shall be presumptively in the child's best interests unless such placement or visitation and communication would be contrary to the child's health, safety or welfare, or the lack of geographic proximity precludes or prevents visitation.

1-b. Upon accepting the transfer of care and custody of a child from the parent, guardian or other person to whom care of the child has been entrusted, a local social services official shall obtain information to the extent known from such person regarding the other parent, any person to whom the parent transferring care and custody had been married at the time of the conception or birth of the child, any 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, and any other person listed in subdivision two of section three hundred eighty-four-c of this title. 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 subdivision 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 transfer of care and custody.

2. Terms. (a) The instrument shall be upon such terms, for such time and subject to such conditions as may be agreed upon by the parties thereto. The office of children and family services may promulgate suggested terms and conditions for inclusion in such instruments, but shall not require that any particular terms and conditions be included. If the instrument provides that the child is to be returned by the authorized agency on a date certain or upon the occurrence of an identifiable event, such agency shall return such child at such time unless such action would be contrary to court order entered at any time prior to such date or event or within ten days thereafter pursuant to section three hundred eighty-four-b of this title or article six, ten, or ten-A of the family court act or unless and so long as the parent or

guardian is unavailable or incapacitated to receive the child. The parent or guardian may, upon written notice to such agency, request return of the child at any time prior to the identified date or event, whereupon such agency may, without court order, return the child or, within ten days after such request, may notify the parent or guardian that such request is denied. If such agency denies or fails to act upon such request, the parent or guardian may seek return of the care and custody of the child by motion in family court for return of such child and order to show cause, or by writ of habeas corpus in the supreme court or family court. If the instrument fails to specify a date or identifiable event upon which such agency shall return such child, such agency shall return the child within twenty days after having received notice that the parent or guardian wishes the child returned, unless such action would be contrary to court order entered at any time prior to the expiration of such twenty day period pursuant to section three hundred eighty-four-b of this title or article six, ten, or ten-A of the family court act. Expenditures by a local social services district for the care and maintenance of a child who has been continued in the care of an authorized agency in violation of the provisions of this subdivision shall not be subject to state reimbursement.

(b) No provisions set forth in any such instrument regarding the right of the parent or guardian to visit the child or to have services provided to the child and to the parent or guardian to strengthen the parental relationship may be terminated or limited by the authorized agency having the care and custody of the child unless: (i) the instrument shall have been amended to so limit or terminate such right, pursuant to subdivision three of this section; or (ii) the right of visitation or to such services would be contrary to or inconsistent with a court order obtained in any proceeding in which the parent or guardian was a party.

(c) The instrument shall state, in lay terms, in conspicuous print of at least eighteen point type:

(i) that the parent or guardian has the right, prior to signing the instrument transferring the care and custody of the child to an authorized agency, to legal representation of the parent's own choosing. The agency shall provide the parent or guardian with a list of attorneys or legal services organizations, if any, which provide free legal

services to persons unable to otherwise obtain such services;

(ii) that the parent or guardian has no legal obligation to transfer the care and custody of the child to such official, and will incur no legal sanction for failing to do so;

(iii) that the law permits the instrument to specify a date certain or an identifiable event upon which the child is to be returned, and if no date or event is specified, that the parent or guardian has a right to the return of the child within twenty days of a request for return, unless otherwise ordered by the court; and to otherwise have the child returned in accordance with the terms of the instrument and the provisions of this section;

(iv) that the parent or guardian has a right to supportive services, which shall include preventive and other supportive services authorized to be provided pursuant to the state's consolidated services plan, to visit the child, and to determine jointly with the agency the terms and frequency of visitation;

(v) that the parent or guardian, subject to the terms of the instrument, has an obligation

(A) to visit the child,

(B) to plan for the future of the child,

(C) to meet with and consult with the agency about such plan,

(D) to contribute to the support of the child to the extent of his or her financial ability to do so, and

(E) to inform the agency of any change of name and address;

(vi) that the failure of the parent or guardian to meet the obligations listed in subparagraph (v) could be the basis for a court proceeding for the commitment of the guardianship and custody of the child to an authorized agency thereby terminating parental rights;

(vii) that the parent or guardian has a right to a fair hearing pursuant to section twenty-two of this chapter concerning the agency's failure to permit the parent or guardian to visit the child or to provide supportive services, which shall include preventive and other supportive services authorized to be provided pursuant to the state's consolidated services plan, to the child and to the parent or guardian;

(viii) the amount of money which the parent will periodically contribute to the support of the child and the schedule for such payments, if known.

(ix) that if the child remains in foster care for fifteen of the most recent twenty-two months, the agency may be required by law to file a petition to terminate parental rights.

(d) In any case where a parent who has transferred care and custody of a child to a social services official pursuant to this section informs the social services official that an order or judgment conferring visitation rights relating to the child has been entered by the family court or supreme court or that a written agreement as described in section two hundred thirty-six of the domestic relations law between the parents confers such rights, any instrument executed pursuant to this section shall incorporate the provisions of such order, judgment or agreement to the extent that visitation rights are affected and shall provide for visitation or other rights as required by such order, judgment or agreement. Such incorporation shall not preclude a social services official from exercising his authority pursuant to paragraph (e) or (f) of this subdivision.

(e) Where a social services official opposes incorporation of an order, judgment or agreement described in paragraph (d) of this subdivision, such official may, upon execution of the instrument described in this section and upon notice to the non-custodial parent or grandparent named in such order, judgment or agreement, be heard thereon in a proceeding pursuant to section three hundred fifty-eight-a of this chapter.

(f) Nothing in this section shall be deemed to prohibit a social services official or an attorney for the child, if any, from making an application to modify the terms of a visitation order, incorporated pursuant to this section, for good cause shown, upon notice to all interested parties, or to limit the right of a non-custodial parent or grandparent to seek visitation pursuant to applicable provisions of law.

(g) In the event a child whose care and custody is transferred pursuant to this section is admitted to a hospital operated or licensed by the office of mental health and cannot be returned to the physical custody of his or her parent or guardian upon request because, pursuant to section four hundred of this chapter, the medical director of the facility has not authorized the removal of the child, the child shall nonetheless be deemed to have been returned to the legal care and custody of his or her parent or guardian. Expenditures by a social

services district for the care and maintenance of such a child shall be subject to state reimbursement notwithstanding the provisions of section one hundred fifty-three-b of this chapter.

(h) (i) Where a local social services official determines that a child is at significant risk of placement in the care and custody of the local commissioner of social services during the eighteen months immediately following review by such official because the custodial parent or legal guardian of such child is suffering from a progressively chronic or irreversibly fatal illness and it is determined that there is neither a relative nor a close friend identified by the custodial parent or the legal guardian able to assume legal guardianship of the child, the custodial parent or legal guardian shall be assisted by the local social services district in transferring the care and custody of the child to an authorized agency by a written instrument in accordance with the provisions for this section which provides the transfer shall not take effect until the parent or legal guardian dies, becomes debilitated or incapacitated as defined in subdivision one of section seventeen hundred twenty-six of the surrogate's court procedure act.

(ii) Where a local social services official determines that a child is at significant risk of placement in the care and custody of the local commissioner of social services during the eighteen months immediately following a review of such official because the custodial parent or legal guardian is suffering from a progressively chronic or irreversibly fatal illness and there is a relative or close friend identified by the custodial parent or legal guardian who is able and willing to assume care and custody of the child, but who requires foster care services and financial support thereof pursuant to section three hundred ninety-eight-a of this article, the custodial parent or legal guardian shall be assisted by the local social services district in transferring the care and custody of the child to an authorized agency by a written instrument in accordance with the provisions of this section. Such instrument shall provide that the transfer of custody shall not take effect until the parent or legal guardian dies, becomes debilitated or incapacitated as defined in subdivision one of section seventeen hundred twenty-six of the surrogate's court procedure act. If otherwise qualified, the social services official shall assist the person identified to accept care and custody of the child to become certified

as a foster parent.

(iii) A local social services official who accepts or proposes to accept the care and custody of a child by means of a written instrument executed pursuant to this paragraph, shall, pursuant to section three hundred fifty-eight-a of this chapter, petition the family court of the county or city in which the local social services official has his or her office to approve such written instrument. A written instrument executed pursuant to this paragraph and approved pursuant to section three hundred fifty-eight-a of this chapter shall be in effect until the court reviews the child's placement pursuant to article ten-A of the family court act. The status of a child subject to such an instrument shall be reviewed by the court pursuant to article ten-A of the family court act.

(iv) Upon receiving a notice from the custodial parent or the legal guardian that the parent or legal guardian is no longer debilitated or incapacitated and that the parent or legal guardian requests the immediate return of the child, the social services district shall return such child to the parent or legal guardian within ten days of receiving notice, except where a contrary court order has been issued pursuant to part two, five or seven of article ten of the family court act.

3. Amendment. (a) The parties to the instrument or anyone acting on their behalf with their consent may amend it by mutual consent but only by a supplemental instrument executed in the same manner as the original instrument. The supplemental instrument shall be attached to, and become part of, the original instrument. The supplemental instrument shall contain the recitation required in paragraph (c) of subdivision two of this section.

(b) The instrument shall also be deemed amended where ordered by the family court pursuant to the provisions of paragraph (d) of subdivision ten of section three hundred fifty-eight-a of this chapter.

4. Execution. The instrument shall be executed in the presence of one or more witnesses and shall include only the provisions, terms and conditions agreed upon by the parties thereto.

5. Records. The instrument shall be kept in a file maintained for that

purpose by the agency accepting the care and custody of the child. A copy of the instrument shall be given to the parent or guardian at the time of the execution of the instrument.

6. An instrument executed pursuant to the provisions of this section shall not constitute a remand or commitment pursuant to this chapter.