

STATE OF NEW YORK

3880

2009-2010 Regular Sessions

IN SENATE

April 2, 2009

Introduced by Sen. MONTGOMERY -- (at request of the Office of Children and Family Services) -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the social services law and the family court act, in relation to permanency for destitute children, reinstatement of parental relationships and enhancement of supervised independent living programs; and to repeal certain provisions of the social services law relating thereto

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

1 Section 1. Subdivision 3 of section 371 of the social services law, as
2 amended by chapter 722 of the laws of 1978, is amended to read as
3 follows:

4 3. "Destitute child" means a child who[~~, through no neglect on the~~
5 ~~part of its parent, guardian or custodian, is~~

6 ~~(a) destitute or homeless, or~~

7 ~~(b)] is not subject to article ten of the family court act; is unac-~~
8 ~~panied by a parent or other legally responsible adult; and is either~~

9 in a state of want or suffering due to lack of sufficient food, cloth-

10 ing, [~~or~~] shelter, or medical or surgical care, or
11 [~~(c) a person under the age of eighteen years who is absent from his~~
12 ~~legal residence without the consent of his parent, legal guardian or~~
13 ~~custodian, or~~

14 ~~(d) a person under the age of eighteen who]~~ is without a place of
15 shelter where appropriate supervision and care are available.

16 § 2. Subdivision 3 of section 374-b of the social services law, as
17 added by chapter 160 of the laws of 2004, is amended to read as follows:

18 3. An authorized agency that has received approval from the office of
19 children and family services may operate a supervised independent living
20 program, as defined in section three hundred seventy-one of this title.
21 The office of children and family services shall promulgate regulations

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

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1 establishing the standards for approval and operation of supervised
2 independent living programs. An authorized agency shall not be required
3 to notify the municipality in accordance with subdivision two of this
4 section when establishing a supervised independent living program or a
5 supervised independent living unit.

6 § 3. The section heading of section 384-b of the social services law,
7 as added by chapter 666 of the laws of 1976, is amended to read as
8 follows:

9 Guardianship and custody of destitute or dependent children; commit-
10 ment by court order; vacatur of commitment.

11 § 4. Section 384-b of the social services law is amended by adding a
12 new subdivision 13 to read as follows:

13 13. A petition to vacate an order of disposition committing the guar-
14 dianship and custody of a child whose parental rights have been termi-
15 nated may be brought in accordance with part one-A of article six of the
16 family court act.

17 § 5. The social services law is amended by adding a new section 384-d
18 to read as follows:

19 § 384-d. Care and custody of destitute children. 1. Initiation of
20 judicial proceeding. A social services commissioner shall, within four-
21 teen days of accepting the care as a public charge of a child who
22 appears to be a destitute child, file a petition in the family court
23 alleging that the child is a destitute child and requesting that the
24 court place the child in the temporary care and custody of such commis-
25 sioner while an investigation is commenced to determine whether the
26 child is an abused or neglected child subject to the provisions of arti-
27 cle ten of the family court act or a destitute child as defined in
28 subdivision three of section three hundred seventy-one of this title.

29 2. Contents of petition. The petition shall allege the basis for the
30 belief that the child is a destitute child; whether the whereabouts of
31 the parent, parents, guardian, or other person legally responsible are
32 known, and if so, the alleged address of that person, any other known
33 persons legally responsible for the child, and any other relatives of
34 the child. The petition shall contain a notice in conspicuous print
35 providing that if the child remains in foster care for fifteen of the
36 twenty-two months that follow, the agency may be required by law to file
37 a petition to terminate parental rights. The petition shall also set
38 forth the efforts that were made, prior to the placement of the child
39 into foster care, to prevent removal of the child from his or her home
40 and the efforts which were made, prior to the filing of the petition, to
41 make it possible for the child to return safely home. If such efforts
42 were not made, the petition shall set forth the reasons why these
43 efforts were not made. The petition shall request that a temporary order
44 be made transferring the care and custody of the child to the social
45 services official.

46 3. Initial appearance. At the initial appearance:

47 (a) The court shall appoint a law guardian to represent the child; and

48 (b) The court shall determine whether placement of the child in tempo-
49 rary care and custody of the local commissioner is in the best interests
50 of the child; whether it would be contrary to the welfare of the child
51 to continue in his or her own home; that, where appropriate, reasonable
52 efforts were made prior to the placement of the child into foster care
53 to prevent removal of the child from his or her home; and that prior to
54 the initiation of the court proceeding required to be held by this
55 subdivision, reasonable efforts were made to make it possible for the
56 child to return safely home. The court shall include such findings in

1 its order. If the court determines that reasonable efforts to prevent
2 the need for removal of the child from the home were not made but that
3 the lack of such efforts was appropriate under the circumstances, the
4 court order shall include such findings.

5 (c) If the court places the child in the temporary custody of the
6 local commissioner, the court shall:

7 (i) order an investigation into the family circumstances of the child;

8 (ii) set a return date for an investigation review proceeding within
9 forty-five days in accordance with subdivision five of this section.

10 (iii) set a date certain for an initial permanency hearing pursuant to
11 paragraph two of subdivision (a) of section one thousand eighty-nine of
12 the family court act, which date certain shall be in no later than eight
13 months from the date the social services official accepted care of the
14 child. The date certain shall be included in the written order of the
15 court placing the child in the temporary care and custody of the local
16 commissioner.

17 4. Notice. At the initial appearance and at any hearing thereafter,
18 the court may direct that service of a notice of the proceeding and a
19 copy of the petition shall be made upon the parent, parents, guardian,
20 or other legally responsible person in such manner as the court may
21 direct. In the event the court determines that service by publication is
22 necessary and orders service by publication, service shall be made in
23 accordance with the provisions of rule three hundred sixteen of the
24 civil practice law and rules, provided, however, that a single publica-
25 tion of the summons or other process with a notice as specified herein
26 in only one newspaper designated in the order shall be sufficient. In
27 no event shall the whole petition be published. The notice to be
28 published with the summons or other process shall state the date, time,
29 place and purpose of the proceeding.

30 5. Investigation review proceeding. At the investigation review
31 proceeding, the court shall:

32 (a) review the investigation conducted by the local social services
33 district of the family circumstances of the child;

34 (b) determine whether further investigation is necessary, and if so,
35 set a date for another investigation review proceeding;

36 (c) determine whether notice shall be made upon any parent, guardian,
37 or other legally responsible person and the method of such notice;

38 (d) determine whether a motion must be made to substitute a petition
39 under article ten of the family court act; or

40 (e) if the court determines that no further investigation or notice is
41 necessary, determine whether the child is a destitute child within the
42 meaning of section three hundred seventy-one of this title.

43 6. Disposition and order. If the court determines that the child is a
44 destitute child within the meaning of section three hundred seventy-one
45 of this title, the court shall issue an order placing the child in the
46 care and custody of the local commissioner. Such order shall contain the
47 date certain previously set for the initial permanency hearing. Children
48 placed under this section shall be placed until the court completes the
49 initial permanency hearing. Should the court determine that placement
50 will continue beyond completion of the initial permanency hearing,
51 subsequent permanency hearings shall be scheduled pursuant to paragraph
52 two of subdivision (a) of section one thousand eighty-nine of the family
53 court act.

54 § 6. Subdivision 1 of section 398 of the social services law is
55 amended to read as follows:

1 1. As to destitute children: Assume charge of, and provide care and
2 support for, any destitute child who cannot be properly cared for in his
3 or her home, and file a petition to obtain custody of such child pursu-
4 ant to section three hundred eighty-four-d of this article.

5 § 7. The opening paragraph and paragraph (a) of subdivision 2 of
6 section 398 of the social services law, as amended by chapter 880 of the
7 laws of 1976, are amended to read as follows:

8 As to neglected, abused [~~or~~], abandoned, or destitute children:

9 (a) Investigate [~~the~~] any alleged neglect, abuse or abandonment of a
10 child[~~r~~]; offer protective social services to prevent injury to the
11 child, to safeguard his or her welfare, and to preserve and stabilize
12 family life wherever possible [~~and~~]; if necessary, bring the case
13 before the family court for adjudication and care for the child until
14 the court acts in the matter; and, in the case of an abandoned or desti-
15 tute child, [~~shall~~] promptly petition the family court to obtain custody
16 of such child.

17 § 8. Paragraph (b) of subdivision 2 of section 398 of the social
18 services law, as amended by chapter 555 of the laws of 1978, is amended
19 to read as follows:

20 (b) Receive and care for any child alleged to be neglected, abused
21 [~~or~~], abandoned, or destitute who is temporarily placed in [~~his~~] the
22 care of the local commissioner by the family court pending adjudication
23 by such court of the alleged neglect, abuse or abandonment, or finding
24 that the child is a destitute child, including the authority to estab-
25 lish, operate, maintain and approve facilities for such purpose in
26 accordance with the regulations of the [~~department~~] office of children
27 and family services; and receive and care for any neglected, abused
28 [~~or~~], abandoned, or destitute child placed or discharged to [~~his~~] the
29 care of the local commissioner by the family court.

30 § 9. Paragraph (f) of subdivision 2 of section 398 of the social
31 services law, as added by chapter 627 of the laws of 1984, is amended to
32 read as follows:

33 (f) Report to the local criminal justice agency and to the statewide
34 central register for missing children as described in section eight
35 hundred thirty-seven-e of the executive law such information as required
36 on a form prescribed by the commissioner of the division of criminal
37 justice services within forty-eight hours after an abandoned or desti-
38 tute child is found.

39 § 10. Paragraph (i) of subdivision 6 of section 398 of the social
40 services law is REPEALED.

41 § 11. Section 398-e of the social services law, as amended by chapter
42 584 of the laws of 2008, is amended to read as follows:

43 § 398-e. Eligibility for protective services, foster care services,
44 and residential services for victims of domestic violence. An alien,
45 including a non-qualified alien, as determined by applicable federal
46 statute and regulation, is eligible for protective services for adults
47 and children, foster care services, and residential services for victims
48 of domestic violence, to the extent such person is otherwise eligible
49 pursuant to this chapter and the regulations of the office of children
50 and family services and the office of temporary and disability assist-
51 ance.

52 § 12. Subdivision (a) of section 249 of the family court act, as
53 amended by section 2 of part A of chapter 3 of the laws of 2005, is
54 amended to read as follows:

55 (a) In a proceeding under article three, seven, ten or ten-A of this
56 act or where a revocation of an adoption consent is opposed under

1 section one hundred fifteen-b of the domestic relations law or in any
 2 proceeding under section three hundred fifty-eight-a, three hundred
 3 eighty-three-c, three hundred eighty-four [~~ex~~], three hundred eighty-
 4 four-b, or three hundred eighty-four-d of the social services law or
 5 when a minor is sought to be placed in protective custody under section
 6 one hundred fifty-eight of this act, the family court shall appoint a
 7 law guardian to represent a minor who is the subject of the proceeding
 8 or who is sought to be placed in protective custody, if independent
 9 legal representation is not available to such minor. In any proceeding
 10 to extend or continue the placement of a juvenile delinquent or person
 11 in need of supervision pursuant to section seven hundred fifty-six or
 12 353.3 of this act or any proceeding to extend or continue a commitment
 13 to the custody of the commissioner of mental health or the commissioner
 14 of mental retardation and developmental disabilities pursuant to section
 15 322.2 of this act, the court shall not permit the respondent to waive
 16 the right to be represented by counsel chosen by the respondent,
 17 respondent's parent, or other person legally responsible for the
 18 respondent's care, or by a law guardian. In any other proceeding in
 19 which the court has jurisdiction, the court may appoint a law guardian
 20 to represent the child, when, in the opinion of the family court judge,
 21 such representation will serve the purposes of this act, if independent
 22 legal counsel is not available to the child. The family court on its own
 23 motion may make such appointment.

24 § 13. Article 6 of the family court act is amended by adding a new
 25 part 1-A to read as follows:

26 PART 1-A

27 VACATUR OF COMMITMENT OF GUARDIANSHIP AND CUSTODY;

28 REINSTATEMENT OF PARENTAL RIGHTS

29 Section 635. Petition to vacate an order of disposition committing the
 30 guardianship and custody of a child to an authorized
 31 agency and reinstate parental rights.

32 636. Originating a proceeding to vacate a commitment of guardi-
 33 anship and custody and reinstate parental rights; service
 34 and venue.

35 637. Burden of proof and findings.

36 638. Disposition.

37 639. Effect of order.

38 § 635. Petition to vacate an order of disposition committing the guar-
 39 dianship and custody of a child to an authorized agency and reinstate
 40 parental rights. Vacatur of an order committing the guardianship and
 41 custody of a child to an authorized agency so as to reinstate the rights
 42 of a parent or parents is an extraordinary remedy that may be requested
 43 by the attorney for the child, the authorized agency to whose guardian-
 44 ship and custody the child is committed, or the respondent or respond-
 45 ents whose parental rights the petition would seek to reinstate, where
 46 the following conditions are met:

47 (a) the guardianship and custody of a child was committed to the
 48 authorized agency or individual at least three years prior to the date
 49 of the filing of the petition for vacatur;

50 (b) the basis for the commitment of guardianship and custody was not
 51 severe or repeated abuse as defined in subdivision eight of section
 52 three hundred eighty-four-b of the social services law;

53 (c) the child is fourteen years of age or older, is under the juris-
 54 isdiction of the family court, has not been adopted and no adoption
 55 proceeding is pending, and if the child's attorney is not the petition-
 56 er, the child consents to the filing of the petition by affirmation; and

1 (d) if the respondent or respondents whose parental rights the peti-
2 tion seeks to reinstate is not the petitioner, such respondent or
3 respondents consents or consent to the filing of the petition by affir-
4 mation.

5 § 636. Originating a proceeding to vacate a commitment of guardianship
6 and custody and reinstate parental rights; service and venue. (a) A
7 proceeding to vacate the order of disposition committing guardianship
8 and custody of a child to an authorized agency and reinstate parental
9 rights shall be originated by a petition filed by the child's law guard-
10 ian, the authorized agency to whose guardianship and custody the child
11 was committed, or the respondent or respondents whose parental rights
12 the petition seeks to reinstate.

13 (b) Such petition shall be served on the attorney for the child, the
14 authorized agency to which the child's guardianship and custody was
15 committed and the respondent or respondents whose parental rights the
16 petition seeks to reinstate, as well as the attorney or attorneys who
17 represented the respondent or respondents in the proceeding for the
18 termination of parental rights.

19 (c) A certified copy of the order of disposition in the termination of
20 parental rights proceeding and affirmations containing the consents
21 required by section six hundred thirty-five of this part shall be
22 attached to the petition.

23 (d) Upon the filing of a petition under this part, the court shall
24 cause a summons to be issued to the child, the authorized agency to
25 which the child's guardianship and custody was committed, and the
26 respondent or respondents whose parental rights the petition seeks to
27 reinstate, each of whom shall be party to the proceeding. The summons
28 shall be served in accordance with section six hundred seventeen of this
29 article, accompanied by a copy of the petition, the order of commitment,
30 and the affidavits of consent.

31 (e) A petition brought pursuant to this part shall be filed with the
32 court that exercised jurisdiction over the most recent permanency
33 proceeding involving the child and shall be assigned, wherever practica-
34 ble, to the family court judge who presided over that proceeding or the
35 proceeding for the termination of parental rights.

36 (f) Wherever practicable, the child shall be represented by the law
37 guardian that represented the child in the most recent permanency
38 proceeding and the parent or parents shall be represented by the attor-
39 ney or attorneys who represented the parent or parents in the proceeding
40 for termination of parental rights. Where this is not practicable, or
41 where the court grants a request by the law guardian or attorney or
42 attorneys to be relieved, the court shall immediately assign a new law
43 guardian, attorney or attorneys, as applicable.

44 § 637. Burden of proof and findings. The petitioner shall have the
45 burden of proof by clear and convincing evidence that vacatur of the
46 order of disposition committing guardianship and custody of the child to
47 the authorized agency and reinstatement of parental rights is in the
48 child's best interests and that the necessary parties consent to such
49 vacatur and reinstatement as required by section six hundred thirty-five
50 of this part. In determining whether the burden of proof has been met,
51 the court shall take into account the following factors:

52 (a) the bond between the child and the parent or parents;

53 (b) the ability of the parent or parents to safely parent the child;
54 and

55 (c) the likelihood of the child being adopted, including the child's
56 willingness to be adopted.

1 § 638. Disposition. The court shall issue a written decision which
 2 sets forth the basis for the court's decision and makes one of the
 3 following orders of disposition:

4 (a) the court may dismiss the petition brought pursuant to this part,
 5 in which case the child will retain the status of a freed child and will
 6 remain in the guardianship and custody of the authorized agency;

7 (b) the court may grant the petition brought pursuant to this part and
 8 vacate the order of disposition previously entered in the termination of
 9 parental rights proceeding and reinstate the guardianship and custody of
 10 the child to the parent who is the subject of the petition; or

11 (c) the court may issue a temporary order staying the proceeding for a
 12 period not to exceed six months which may not be extended. During this
 13 period a trial discharge of the child to the physical custody of the
 14 parent or parents may occur, with the authorized agency retaining guar-
 15 dianship and custody of the child. The court may direct the authorized
 16 agency to provide supervision to the parent or parents during the stay
 17 of proceedings. The court shall schedule a date certain for final review
 18 and disposition of the petition at least thirty days prior to the expi-
 19 ration of the stay, at which time the parties may submit any additional
 20 evidence arising since the filing of the petition.

21 § 639. Effect of order. The vacatur of the commitment of custody and
 22 guardianship of the child to an authorized agency and reinstatement of a
 23 parent's rights shall have no effect upon the underlying order of fact-
 24 finding made in the termination of parental rights proceeding and shall
 25 have no effect upon the rights of a parent who is not the subject of the
 26 petition to vacate or whose reinstatement of rights is found not to be
 27 in the best interests of the child. Should the child return to the
 28 custody of the authorized agency or otherwise be placed outside of the
 29 home following the reinstatement of parental rights, any future proceed-
 30 ing to terminate parental rights may not rely solely upon the prior
 31 order of fact-finding made pursuant to subdivision (c) of section six
 32 hundred thirty-one of this article or subdivision three of section three
 33 hundred eighty-four-b of the social services law.

34 § 14. Section 1086 of the family court act, as added by section 27 of
 35 part A of chapter 3 of the laws of 2005, is amended to read as follows:

36 § 1086. Purpose. The purpose of this article is to establish uniform
 37 procedures for permanency hearings for all children who are placed in
 38 foster care pursuant to section three hundred fifty-eight-a, three
 39 hundred eighty-four [~~oe~~], three hundred eighty-four-a, or three hundred
 40 eighty-four-d of the social services law or pursuant to section one
 41 thousand twenty-two, one thousand twenty-seven, or one thousand fifty-
 42 two of this act; children who are directly placed with a relative pursu-
 43 ant to section one thousand seventeen or one thousand fifty-five of this
 44 act; and children who are freed for adoption. It is meant to provide
 45 children placed out of their homes timely and effective judicial review
 46 that promotes permanency, safety and well-being in their lives.

47 § 15. Subdivision (a) of section 1087 of the family court act, as
 48 added by section 27 of part A of chapter 3 of the laws of 2005, is
 49 amended to read as follows:

50 (a) "Child" shall mean a person under the age of eighteen who is
 51 placed in foster care pursuant to section three hundred fifty-eight-a,
 52 three hundred eighty-four [~~oe~~], three hundred eighty-four-a or three
 53 hundred eighty-four-d of the social services law or pursuant to section
 54 one thousand twenty-two, one thousand twenty-seven, or one thousand
 55 fifty-two of this act; or directly placed with a relative pursuant to
 56 section one thousand seventeen or one thousand fifty-five of this act;

1 or who has been freed for adoption or a person between the ages of eigh-
2 teen and twenty-one who has consented to continuation in foster care.

3 § 16. Section 1088 of the family court act, as added by section 27 of
4 part A of chapter 3 of the laws of 2005, is amended to read as follows:

5 § 1088. Continuing court jurisdiction. If a child is placed pursuant
6 to section three hundred fifty-eight-a, three hundred eighty-four, [~~or~~]
7 three hundred eighty-four-a or three hundred eighty-four-d of the social
8 services law, or pursuant to section one thousand seventeen, one thou-
9 sand twenty-two, one thousand twenty-seven or one thousand fifty-two of
10 this act, or directly placed with a relative pursuant to section one
11 thousand seventeen or one thousand fifty-five of this act; or if the
12 child is freed for adoption pursuant to section three hundred eighty-
13 three-c, three hundred eighty-four or three hundred eighty-four-b of the
14 social services law, the case shall remain on the court's calendar and
15 the court shall maintain jurisdiction over the case until the child is
16 discharged from placement and all orders regarding supervision,
17 protection or services have expired. The court shall rehear the matter
18 whenever it deems necessary or desirable, or upon motion by any party
19 entitled to notice in proceedings under this article, or by the law
20 guardian for the child, and whenever a permanency hearing is required by
21 this article. While the court maintains jurisdiction over the case, the
22 provisions of section one thousand thirty-eight of this act shall
23 continue to apply.

24 § 17. Paragraph 2 of subdivision (a) of section 1089 of the family
25 court act, as amended by chapter 437 of the laws of 2006, is amended to
26 read as follows:

27 (2) All other permanency hearings. At the conclusion of the hearing
28 pursuant to section one thousand twenty-two, one thousand twenty-seven,
29 or one thousand fifty-two of this act, or section three hundred eighty-
30 four-d of the social services law, at which the child was remanded or
31 placed and upon the court's approval of a voluntary placement instrument
32 pursuant to section three hundred fifty-eight-a of the social services
33 law, the court shall set a date certain for an initial permanency hear-
34 ing, advise all parties in court of the date set and include the date in
35 the order. Orders issued in subsequent court hearings prior to the
36 permanency hearing, including, but not limited to, the order of place-
37 ment issued pursuant to section one thousand fifty-five of this act, or
38 section three hundred eighty-four-d of the social services law, shall
39 include the date certain for the permanency hearing. The initial perman-
40 ency hearing shall be commenced no later than six months from the date
41 which is sixty days after the child was removed from his or her home;
42 provided, however, that if a sibling or half-sibling of the child has
43 previously been removed from the home and has a permanency hearing date
44 certain scheduled within the next eight months, the permanency hearing
45 for each child subsequently removed from the home shall be scheduled on
46 the same date certain that has been set for the first child removed from
47 the home, unless such sibling or half-sibling has been removed from the
48 home pursuant to article three or seven of this act. The permanency
49 hearing shall be completed within thirty days of the scheduled date
50 certain.

51 § 18. Subdivision (a) of section 1090 of the family court act, as
52 added by section 27 of part A of chapter 3 of the laws of 2005, is
53 amended to read as follows:

54 (a) If a law guardian for the child has been appointed by the family
55 court in a proceeding pursuant to section three hundred fifty-eight-a,
56 three hundred eighty-three-c, three hundred eighty-four, [~~or~~] three

1 hundred eighty-four-b, or three hundred eighty-four-d of the social
2 services law, or article ten of this act, the appointment of the law
3 guardian shall continue without further court order or appointment,
4 unless another appointment of a law guardian has been made by the court,
5 until the child is discharged from placement and all orders regarding
6 supervision, protection or services have expired. All notices, reports
7 and motions required by law shall be provided to such law guardian. The
8 law guardian may be relieved of his or her representation upon applica-
9 tion to the court for termination of the appointment. Upon approval of
10 the application, the court shall immediately appoint another law guardi-
11 an to whom all notices, reports, and motions required by law shall be
12 provided.

13 § 19. This act shall take effect on the ninetieth day after it shall
14 have become a law.

NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1

BILL NUMBER: S3880

SPONSOR: MONTGOMERY

TITLE OF BILL:

An act to amend the social services law and the family court act, in relation to permanency for destitute children, reinstatement of parental relationships and enhancement of supervised independent living programs; and to repeal certain provisions of the social services law relating thereto

PURPOSE OF THE BILL:

This bill seeks to enhance permanency for children by establishing a process by which a local commissioner of social services would assume care of a destitute child; allowing an order of disposition vacating guardianship and custody and reinstating parental rights in limited circumstances; and facilitating the ability of an authorized agency to establish supervised independent living programs (SILPs) for older foster children.

SUMMARY OF PROVISIONS:

Section 1 of the bill would amend Social Services Law (SSL) § 371(3) to revise the definition of "destitute child" to clarify that it does not include children who are 'covered by other provisions of the SSL or Family Court Act (FCA).

Section 2 of the bill would amend SSL § 374-b(3) to clarify that an authorized agency does not have to notify the applicable municipality when establishing a supervised independent living program (SILP), or a

unit which is part of a SILP.

Sections 3 and 4 of the bill would amend the section heading of SSL § 384-b and add a new subdivision 13 to reference the vacatur of the commitment of guardianship and custody of a child, as authorized under bill section thirteen.

Section 5 of the bill would add a new section 384-d to the SSL to establish a process whereby a local commissioner of social services may assume care and custody of a child who appears to be destitute. The local commissioner must file a petition in Family Court within fourteen days of assuming care of the child. The court must appoint a law guardian to represent the child, make findings related to the child's eligibility for federal reimbursement for a portion of the cost of the child's care, order an investigation of the child's family circumstances, set return dates to review the investigation and hold a permanency hearing, and determine the disposition of the child.

Sections 6 through 10 of the bill would make conforming amendments to SSL § 398 relating to destitute children.

Section 11 of the bill would amend SSL § 398-e to authorize foster care services for alien children.

Section 12 of the bill would amend FCA § 249 to clarify that a destitute child is entitled to law guardian representation.

Section 13 of the bill would add a new Part 1-A to the FCA Article 6 to establish a procedure to vacate the order of disposition committing the guardianship and custody of a child to a local commissioner of social services and to reinstate parental rights where: the termination of parental rights occurred at least three years prior to the petition; the legal basis for the termination of parental rights was not severe or repeated abuse; the child and the parent whose rights are being reinstated consents; and the child is fourteen years or older, is under the jurisdiction of the family court, and has neither been adopted nor has an adoption proceeding pending. A court may approve a petition if it is in the best interest of the child. Where appropriate, the court may stay the proceeding for up to six months and order a trial discharge to the physical custody of the parent.

Sections 14 through 18 of the bill would amend provisions of FCA Article 10-A to require permanency hearings for destitute children.

Section 19 of the bill provides for an effective date of 90 days after enactment.

EXISTING LAW:

SSL § 371 defines terms used in Article 6 of the SSL pertaining to children.

SSL § 374-b provides authority for authorized agencies to establish agency-operated boarding homes including SILPs.

SSL § 384-b provides a process for termination of parental rights where a child is abandoned, permanently neglected, or severely or repeatedly abused; or where the parent has a mental illness or mental retardation which places the child in danger of becoming a neglected child.

SSL § 398 sets forth the duties and responsibilities of a local commissioner of social services for abused, neglected, abandoned, destitute,

and delinquent children and persons in need of supervision. SSL § 398-e provides that aliens are eligible for adult and child protective services and residential services for victims of domestic violence.

FCA § 249 enumerates the types of proceedings in which a child is entitled to law guardian representation.

FCA Article 6 provides a process for the court to determine that a child is permanently neglected, and for adoption, custody and guardianship of a child.

FCA Article 10-A sets forth the purpose, process, and requirements for permanency hearings for a child in foster care.

PRIOR LEGISLATIVE HISTORY:

Some of the provisions of this bill previously were included in S.7443/A.10807 of 2008 and S.7404/A.10804 of 2008. Both bills were referred to the Senate Social Services, Children and Families Committee and the Assembly Children and Families Committee.

STATEMENT IN SUPPORT:

This bill includes three components to improve permanency for children in the child welfare system. It provides a process for a local commissioner of social services to assume responsibility for a destitute child, allows a termination of parental rights to be vacated under limited circumstances, and facilitates the establishment of SILPs for older foster children.

A destitute child is a child with certain needs who is found to have no parents or other legally responsible people to address those needs. For example, a young child who was adopted from another country whose adoptive parent passed away could be a destitute child. Another example is a child victim of human trafficking who is found within New York State without a family member to care for him or her.

Currently, the SSL requires that the local social services district commissioner assume the care of destitute children. However, there is no statutory process for bringing the children into the legal custody of the local commissioner or for an initial or on-going judicial review of their placements. This lack of process also precludes the districts from obtaining federal funding toward the cost of providing care to some of these children. This proposal will better protect these children by requiring law guardians to be appointed for them, establishing on-going court oversight of their placements, and enabling social services districts to receive federal reimbursement toward the cost of caring for eligible children.

A second aspect of this bill addresses a small number of cases where it may be appropriate to vacate the order of disposition committing a child to the guardianship and custody of a local commissioner of social services or authorized agency and reinstate the rights of the child's parent. There are older children who have been in foster care for extended periods of time and are freed for adoption, but have not been adopted because there have been no adoption resources identified or the individual is unwilling to be adopted because of his or her continuing bond with the birth parents. In such a case, the birth parents may be appropriate permanency resources, if the parents have addressed the issues that led to the original termination of their parental rights. In these limited circumstances, the bill permits the court to reinstate parental rights, with the consent of the child and the parent whose rights are being reinstated, and when it is in the best interest of the child.

Finally, the bill addresses an ambiguity regarding whether an authorized

agency is required to notify the applicable municipality that it is establishing a SILP unit. Currently, such notification is required for the establishment of agency operated boarding homes (AOBHs), which generally are located in family dwellings, house up to eight foster children along with on site staff, and operate on a long-term basis. Although SILP units are statutorily classified as AOBHs, they are significantly different from the average AOBHs. A typical SILP unit is an apartment housing two or three older foster children who are living on their own with periodic visitation and support from agency staff while the children learn independent living skills. A SILP unit usually exists as a foster care program for a short period of time because the youth often remain in, and assume the lease for, the apartment once they are discharged from foster care. As a result, authorized agencies regularly eliminate certain apartments as SILP units and establish new units in other apartments as different foster children become eligible for that level of care. Given this high turnover, it is impractical and of questionable utility to require that a municipality be notified of the establishment of each new SILP unit.

BUDGET IMPLICATIONS:

This bill has no fiscal implications, although it may enable social services districts to receive federal reimbursement for a portion of the costs of care for destitute children and may save costs to social services districts where youth are discharged from foster care to their parents.

EFFECTIVE DATE:

This bill would take effect 90 days after enactment.
