

# STATE OF NEW YORK

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4551

2007-2008 Regular Sessions

## IN SENATE

April 18, 2007

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Introduced by Sen. KRUGER -- (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 Social Services, Children and Families

AN ACT to amend the social services law, in relation to compliance with federal requirements for other states to check prospective foster and adoptive parents against the statewide central register of child abuse and maltreatment (Part A); to amend the family court act, in relation to compliance with federal requirements pertaining to reasonable efforts in regard to identification of appropriate in-state and out-of-state placements for children removed from home (Part B); and to amend the family court act, the domestic relations law and the social services law, in relation to compliance with federal requirements to expedite permanency for abandoned infants (Part C)

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

1 Section 1. This act enacts into law components of legislation deemed  
2 necessary to implement recently enacted federal requirements in this  
3 state. Each component is wholly contained within a Part identified as  
4 Parts A through C. The effective date for each particular provision  
5 contained within such Part is set forth in the last section of such  
6 Part. Any provision in any section contained within a Part, including  
7 the effective date of the Part, which makes reference to a section "of  
8 this act", when used in connection with that particular component, shall  
9 be deemed to mean and refer to the corresponding section of the Part in  
10 which it is found. Section two provides for severability of these  
11 provisions and section three of this act sets forth the general effec-  
12 tive date of this act.

13

### PART A

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

LBD09858-03-7

1 Section 1. Subparagraphs (x) and (y) of paragraph (A) of subdivision 4  
2 of section 422 of the social services law, as added by chapter 136 of  
3 the laws of 1999, are amended and a new subparagraph (z) is added to  
4 read as follows:

5 (x) members of a local or regional multidisciplinary investigative  
6 team as established pursuant to subdivision six of section four hundred  
7 twenty-three of this title; ~~and~~

8 (y) members of a citizen review panel as established pursuant to  
9 section three hundred seventy-one-b of this article; provided, however,  
10 members of a citizen review panel shall not disclose to any person or  
11 government official any identifying information which the panel has been  
12 provided and shall not make public other information unless otherwise  
13 authorized by statute~~[-]; and~~

14 (z) an entity with appropriate legal authority in another state to  
15 license, certify or otherwise approve prospective foster and adoptive  
16 parents where disclosure of information regarding the prospective foster  
17 or adoptive parents and other persons over the age of eighteen residing  
18 in the home of such prospective parents is required by paragraph twenty  
19 of subdivision (a) of section six hundred seventy-one of title forty-two  
20 of the United States code.

21 § 2. This act shall take effect December 31, 2007.

22

PART B

23 Section 1. Subdivision 6 and paragraphs (a) and (e) of subdivision 7  
24 of section 355.5 of the family court act, subdivision 6 and paragraph  
25 (a) of subdivision 7 as added by chapter 7 of the laws of 1999 and para-  
26 graph (e) of subdivision 7 as amended by chapter 181 of the laws of  
27 2000, are amended and a new paragraph (a-1) is added to subdivision 7 to  
28 read as follows:

29 6. The foster parent caring for the respondent or any pre-adoptive  
30 parent or relative providing care for the respondent shall be provided  
31 with notice of any permanency hearing held pursuant to this section by  
32 the office of children and family services or the commissioner of social  
33 services with whom the respondent was placed. Such foster parent, pre-  
34 adoptive parent and relative shall ~~[be afforded an opportunity]~~ have the  
35 right to be heard at any such hearing; provided, however, no such foster  
36 parent, pre-adoptive parent or relative shall be construed to be a party  
37 to the hearing solely on the basis of such notice and ~~[opportunity]~~  
38 right to be heard. The failure of the foster parent, pre-adoptive  
39 parent, or relative caring for the child to appear at a permanency hear-  
40 ing shall constitute a waiver of the ~~[opportunity]~~ right to be heard and  
41 such failure to appear shall not cause a delay of the permanency hearing  
42 nor shall such failure to appear be a ground for the invalidation of any  
43 order issued by the court pursuant to this section.

44 (a) where appropriate, that reasonable efforts were made to make it  
45 possible for the respondent to return safely to his or her home, or if  
46 the permanency plan for the respondent is adoption, guardianship or  
47 ~~[some other]~~ another permanent living arrangement other than reunifica-  
48 tion with the parent or parents of the respondent, that reasonable  
49 efforts were made to make and finalize such alternate permanent place-  
50 ment including consideration of appropriate in-state and out-of-state  
51 placements;

52 (a-1) that development of the permanency plan included appropriate  
53 consultation with the respondent;

1 (e) with regard to the completion or extension of placement ordered by  
2 the court pursuant to section 353.3 or 355.3 of this article, the steps  
3 that must be taken by the agency with which the respondent is placed to  
4 implement the plan for release or conditional release submitted pursuant  
5 to paragraph (c) of subdivision seven of section 353.3 of this article,  
6 including consideration of appropriate in-state and out-of-state place-  
7 ments, the adequacy of such plan and any modifications that should be  
8 made to such plan.

9 § 2. Section 741-a of the family court act, as added by chapter 7 of  
10 the laws of 1999, is amended to read as follows:

11 § 741-a. Notice and ~~[opportunity]~~ right to be heard. The foster  
12 parent caring for the child or any pre-adoptive parent or relative  
13 providing care for the respondent shall be provided with notice of any  
14 permanency hearing held pursuant to this article by the social services  
15 official. Such foster parent, pre-adoptive parent or relative shall ~~[be~~  
16 ~~afforded an opportunity]~~ have the right to be heard at any such hearing;  
17 provided, however, no such foster parent, pre-adoptive parent or rela-  
18 tive shall be construed to be a party to the hearing solely on the basis  
19 of such notice and ~~[opportunity]~~ right to be heard. The failure of the  
20 foster parent, pre-adoptive parent, or relative caring for the child to  
21 appear at a permanency hearing shall constitute a waiver of the ~~[oppo-~~  
22 ~~tunity]~~ right to be heard and such failure to appear shall not cause a  
23 delay of the permanency hearing nor shall such failure to appear be a  
24 ground for the invalidation of any order issued by the court pursuant to  
25 this section.

26 § 3. Subdivisions (b) and (d) of section 756-a of the family court  
27 act, as amended by chapter 7 of the laws of 1999, are amended to read as  
28 follows:

29 (b) The court shall conduct a permanency hearing concerning the need  
30 for continuing the placement. The child, the person with whom the child  
31 has been placed and the commissioner of social services shall be noti-  
32 fied of such hearing and shall have the ~~[opportunity]~~ right to be heard  
33 thereat.

34 (d) At the conclusion of the permanency hearing the court may, in its  
35 discretion, order an extension of the placement for not more than one  
36 year. The court must consider and determine in its order:

37 (i) where appropriate, that reasonable efforts were made to make it  
38 possible for the child to safely return to his or her home, or if the  
39 permanency plan for the child is adoption, guardianship or some other  
40 permanent living arrangement other than reunification with the parent or  
41 parents of the child, reasonable efforts are being made to make and  
42 finalize such alternate permanent placement including consideration of  
43 appropriate in-state and out-of-state placements;

44 (ii) that development of the permanency plan included appropriate  
45 consultation with the child;

46 (iii) in the case of a child who has attained the age of sixteen, the  
47 services needed, if any, to assist the child to make the transition from  
48 foster care to independent living;

49 ~~[(iii)]~~ (iv) in the case of a child placed outside New York state,  
50 whether the out-of-state placement continues to be appropriate and in  
51 the best interests of the child; and

52 ~~[(iv)]~~ (v) whether and when the child: (A) will be returned to the  
53 parent; (B) should be placed for adoption with the social services offi-  
54 cial filing a petition for termination of parental rights; (C) should be  
55 referred for legal guardianship; (D) should be placed permanently with a  
56 fit and willing relative; or (E) should be placed in another planned

1 permanent living arrangement if the social services official has docu-  
2 mented to the court a compelling reason for determining that it would  
3 not be in the best interest of the child to return home, be referred for  
4 termination of parental rights and placed for adoption, placed with a  
5 fit and willing relative, or placed with a legal guardian; and where the  
6 child will not be returned home, consideration of appropriate in-state  
7 and out-of-state placements.

8 § 4. Subdivisions (c) and (d) of section 1039-b of the family court  
9 act are relettered subdivisions (d) and (e), and the closing paragraph  
10 of subdivision (b), as added by chapter 7 of the laws of 1999, is  
11 amended to read as follows:

12 (c) If the court determines that reasonable efforts are not required  
13 because of one of the grounds set forth above, a permanency hearing  
14 shall be held within thirty days of the finding of the court that such  
15 efforts are not required. At the permanency hearing, the court shall  
16 determine the appropriateness of the permanency plan prepared by the  
17 social services official which shall include whether or when the child:  
18 (i) will be returned to the parent; (ii) should be placed for adoption  
19 with the social services official filing a petition for termination of  
20 parental rights; (iii) should be referred for legal guardianship; (iv)  
21 should be placed permanently with a fit and willing relative; or (v)  
22 should be placed in another planned permanent living arrangement if the  
23 social services official has documented to the court a compelling reason  
24 for determining that it would not be in the best ~~[interest]~~ interests  
25 of the child to return home, be referred for termination of parental rights  
26 and placed for adoption, placed with a fit and willing relative, or  
27 placed with a legal guardian. The social services official shall there-  
28 after make reasonable efforts to place the child in a timely manner,  
29 including consideration of appropriate in-state and out-of-state place-  
30 ments, and to complete whatever steps are necessary to finalize the  
31 permanent placement of the child as set forth in the permanency plan  
32 approved by the court. If reasonable efforts are determined by the  
33 court not to be required because of one of the grounds set forth in this  
34 paragraph, the social services official may file a petition for termi-  
35 nation of parental rights in accordance with section three hundred  
36 eighty-four-b of the social services law.

37 § 5. Section 1040 of the family court act, as added by chapter 7 of  
38 the laws of 1999, is amended to read as follows:

39 § 1040. Notice and ~~[opportunity]~~ right to be heard. The foster parent  
40 caring for the child or any pre-adoptive parent or relative providing  
41 care for the child shall be provided with notice of any permanency hear-  
42 ing held pursuant to this article by the social services official. Such  
43 foster parent, pre-adoptive parent or relative shall ~~[be afforded an~~  
44 ~~opportunity]~~ have the right to be heard at any such hearing; provided,  
45 however, no such foster parent, pre-adoptive parent or relative shall be  
46 construed to be a party to the hearing solely on the basis of such  
47 notice and ~~[opportunity]~~ right to be heard. The failure of the foster  
48 parent, pre-adoptive parent, or relative caring for the child to appear  
49 at a permanency hearing shall constitute a waiver of the ~~[opportunity]~~  
50 right to be heard and such failure to appear shall not cause a delay of  
51 the permanency hearing nor shall such failure to appear be a ground for  
52 the invalidation of any order issued by the court pursuant to this  
53 section.

54 § 6. The opening paragraph and the third undesignated paragraph of  
55 subparagraph (A) of paragraph (i) of subdivision (b) of section 1052 of

1 the family court act, as amended by chapter 7 of the laws of 1999, are  
2 amended to read as follows:

3 whether continuation in the child's home would be contrary to the best  
4 interests of the child and where appropriate, that reasonable efforts  
5 were made prior to the date of the dispositional hearing held pursuant  
6 to this article to prevent or eliminate the need for removal of the  
7 child from his or her home and if the child was removed from the home  
8 prior to the date of such hearing, that such removal was in the child's  
9 best interests and, where appropriate, reasonable efforts were made to  
10 make it possible for the child to safely return home. If the court  
11 determines that reasonable efforts to prevent or eliminate the need for  
12 removal of the child from the home were not made but that the lack of  
13 such efforts was appropriate under the circumstances, the court order  
14 shall include such a finding, or if the permanency plan for the child is  
15 adoption, guardianship or ~~some other~~ another permanent living arrange-  
16 ment other than reunification with the parent or parents of the child,  
17 the court order shall include a finding that reasonable efforts, includ-  
18 ing consideration of appropriate in-state and out-of-state placements,  
19 are being made to make and finalize such alternate permanent placement.

20 (7) If the court determines that reasonable efforts are not to be  
21 required because of one of the grounds set forth above, a permanency  
22 hearing shall be held within thirty days of the finding of the court  
23 that such efforts are not required. At the permanency hearing, the court  
24 shall determine the appropriateness of the permanency plan prepared by  
25 the social services official which shall include whether or when the  
26 child: (i) will be returned to the parent; (ii) should be placed for  
27 adoption with the social services official filing a petition for termi-  
28 nation of parental rights; (iii) should be referred for legal guardian-  
29 ship; (iv) should be placed permanently with a fit and willing relative;  
30 or (v) should be placed in another planned permanent living arrangement  
31 that includes a significant connection to an adult who is willing to be  
32 a permanency resource for the child, if the social services official has  
33 documented to the court a compelling reason for determining that it  
34 would not be in the best interest of the child to return home, be  
35 referred for termination of parental rights and placed for adoption,  
36 placed with a fit and willing relative, or placed with a legal guardian.  
37 The social services official shall thereafter make reasonable efforts to  
38 place the child in a timely manner, including consideration of appropri-  
39 ate in-state and out-of-state placements, and to complete whatever steps  
40 are necessary to finalize the permanent placement of the child as set  
41 forth in the permanency plan approved by the court. If reasonable  
42 efforts are determined by the court not to be required because of one of  
43 the grounds set forth in this paragraph, the social services official  
44 may file a petition for termination of parental rights in accordance  
45 with section three hundred eighty-four-b of the social services law.

46 § 7. Subparagraph (ii) of paragraph 1 and paragraph 2 of subdivision  
47 (b) of section 1089 of the family court act, subparagraph (ii) of para-  
48 graph 1 as added by section 27 of part A of chapter 3 of the laws of  
49 2005 and paragraph 2 as amended by chapter 437 of the laws of 2006, are  
50 amended to read as follows:

51 (ii) the agency supervising the care of the child on behalf of the  
52 social services district with whom the child was placed, the child's law  
53 guardian, and the attorney for the respondent parent. The notice and  
54 pertinent information from the permanency hearing report shall also be  
55 provided to the child if the child is of suitable age and maturity, as

1 determined by the social services district in consultation with the  
2 child's law guardian.

3 (2) The notice and the permanency hearing report shall also be  
4 provided to any pre-adoptive parent or relative providing care for the  
5 child and shall be submitted to the court. The notice of the permanency  
6 hearing only shall be provided to a former foster parent in whose home  
7 the child previously had resided for a continuous period of twelve  
8 months in foster care, if any, unless the court, on motion of any party  
9 or on its own motion, dispenses with such notice on the basis that such  
10 notice would not be in the child's best interests. However, such pre-a-  
11 doptive parent, relative, or former foster parent, on the basis of such  
12 notice, shall have [~~an opportunity~~] the right to be heard but shall not  
13 be a party to the permanency hearing. The failure of such pre-adoptive  
14 parent, relative or former foster parent to appear at a permanency hear-  
15 ing shall constitute a waiver of the [~~opportunity~~] right to be heard.  
16 Such failure to appear shall not cause a delay of the permanency hearing  
17 nor be a ground for the invalidation of any order issued by the court  
18 pursuant to this section.

19 § 8. Subparagraphs (ii) and (iii) of paragraph 4 of subdivision (c) of  
20 section 1089 of the family court act, as added by section 27 of part A  
21 of chapter 3 of the laws of 2005, are amended to read as follows:

22 (ii) where the permanency plan is adoption, guardianship, placement  
23 with a fit and willing relative or another planned permanent living  
24 arrangement other than return to parent, the reasonable efforts that  
25 have been made by the local social services district or agency to make  
26 and finalize such alternate permanent placement, including a description  
27 of any services that have been provided and a description of the consid-  
28 eration of appropriate in-state and out-of-state placements;

29 (iii) where return home of the child is not likely, the reasonable  
30 efforts that have been made by the local social services district or  
31 agency to evaluate and plan for another permanent plan, including  
32 consideration of appropriate in-state and out-of-state placements, and  
33 any steps taken to further a permanent plan other than return to the  
34 child's parent; or

35 § 9. Subparagraph (viii) of paragraph 5 of subdivision (c) of section  
36 1089 of the family court act, as added by section 27 of part A of chap-  
37 ter 3 of the laws of 2005, is amended to read as follows:

38 (viii) where return home of the child is not likely, the efforts that  
39 will be made to evaluate or plan for another permanent plan, including  
40 consideration of appropriate in-state and out-of-state placements; and

41 § 10. The opening paragraph of subdivision (d) of section 1089 of the  
42 family court act, as added by section 27 of part A of chapter 3 of the  
43 laws of 2005, is amended to read as follows:

44 At the conclusion of each permanency hearing, the court shall, upon  
45 the proof adduced, which shall include age-appropriate consultation with  
46 the child who is the subject of the permanency hearing, and in accord-  
47 ance with the best interests and safety of the child, including whether  
48 the child would be at risk of abuse or neglect if returned to the parent  
49 or other person legally responsible, determine and issue its findings,  
50 and enter an order of disposition in writing:

51 § 11. Clause (B) of subparagraph (iii) and subparagraph (iv) of para-  
52 graph 2 of subdivision (d) of section 1089 of the family court act, as  
53 added by section 27 of part A of chapter 3 of the laws of 2005, are  
54 amended to read as follows:

55 (B) where the permanency plan is adoption, guardianship, placement  
56 with a fit and willing relative or another planned permanent living

1 arrangement other than return to parent, whether reasonable efforts have  
2 been made to make and finalize such alternate permanent placement,  
3 including consideration of appropriate in-state and out-of-state place-  
4 ments;

5 (iv) where return home of the child is not likely, what efforts should  
6 be made to evaluate or plan for another permanent plan, including  
7 consideration of appropriate in-state and out-of-state placements;

8 § 12. This act shall take effect December 31, 2007.

9

PART C

10 Section 1. Section 1012 of the family court act is amended by adding a  
11 new subdivision (1) to read as follows:

12 (1) "Abandoned newborn infant" means a child five days old or younger  
13 for whom the court has entered an order pursuant to section one thousand  
14 fifty-one-a of this article determining, within a reasonable medical  
15 certainty, that the child was a newborn infant five days old or younger  
16 that had been left by his or her parent in a manner that indicated  
17 intent to wholly abandon such child by relinquishing and foregoing  
18 responsibility for and rights to the care and custody of such child with  
19 the intent that the child be safe from physical injury and cared for in  
20 an appropriate manner.

21 § 2. Paragraph (ii) of subdivision (f) of section 1012 of the family  
22 court act, as amended by chapter 666 of the laws of 1976, is amended to  
23 read as follows:

24 (ii) who has been abandoned, in accordance with the definition and  
25 other criteria set forth in subdivision five of section three hundred  
26 eighty-four-b of the social services law, by his or her parents or other  
27 person legally responsible for his or her care, but shall not include an  
28 abandoned newborn infant.

29 § 3. The family court act is amended by adding a new section 1031-a to  
30 read as follows:

31 § 1031-a. Abandoned newborn infants, preliminary procedure. (a) Upon  
32 receipt of notice that a child that appears to be an abandoned newborn  
33 infant has been found in the jurisdiction of the local social services  
34 district, the local commissioner shall immediately take protective  
35 custody of the child pursuant to section one thousand twenty-four of  
36 this article until further order of the court. The local commissioner  
37 also shall notify the local district attorney that a child that appears  
38 to be an abandoned newborn infant has been found and provide the  
39 district attorney with any information available regarding the circum-  
40 stances of such abandonment.

41 (b) A proceeding to determine whether a child is an abandoned newborn  
42 infant shall be commenced by such local commissioner within three busi-  
43 ness days of taking protective custody of a child that appeared to be an  
44 abandoned newborn infant, found in the jurisdiction of the local social  
45 services district.

46 (c) The petition shall: (i) allege the location and date of and the  
47 circumstances by which it is alleged that the child was abandoned; (ii)  
48 make an application pursuant to section one thousand thirty-nine-b of  
49 this part for the court to determine that reasonable efforts to return  
50 the child to his or her home are not required based upon a finding that  
51 the child has been subjected to aggravated circumstances; and (iii) have  
52 annexed thereto an affidavit or other official record of the determi-  
53 nation of a licensed physician that such child was a newborn infant when

1 abandoned within the meaning of accepted medical practice and the date  
2 of birth of the child, within a reasonable medical certainty.

3 (d) The court upon receipt of the petition shall appoint a law guardi-  
4 an to represent the child alleged to be an abandoned newborn infant and  
5 shall schedule the petition for a fact finding and dispositional hearing  
6 within thirty days.

7 § 4. Subdivision (a) of section 1039-b of the family court act, as  
8 added by chapter 7 of the laws of 1999, is amended to read as follows:

9 (a) In conjunction with, or at any time subsequent to, the filing of a  
10 petition under section [~~ten hundred~~] one thousand thirty-one or one  
11 thousand thirty-one-a of this [~~chapter~~] part, the social services offi-  
12 cial may file a motion upon notice requesting a finding that reasonable  
13 efforts to return the child to his or her home are no longer required.

14 § 5. Subdivision (a) of section 1041 of the family court act, as  
15 amended by chapter 1015 of the laws of 1972, is amended to read as  
16 follows:

17 (a) that the parent or other person legally responsible for the  
18 child's care is present at the hearing and has been served with a copy  
19 of the petition, unless the child is alleged to be an abandoned newborn  
20 infant pursuant to section one thousand thirty-one-a of this article; or

21 § 6. Section 1042 of the family court act, as amended by section 4 of  
22 part B of chapter 3 of the laws of 2005, is amended to read as follows:

23 § 1042. Effect of absence of parent or other person responsible for  
24 care. If the parent or other person legally responsible for the child's  
25 care is not present, the court may proceed to hear a petition under this  
26 article only if the child is represented by counsel, a law guardian, or  
27 a guardian ad litem. The parent or other person legally responsible for  
28 the child's care shall be served with a copy of the order of disposition  
29 with written notice of its entry pursuant to section one thousand thir-  
30 ty-six of this article. Within one year of such service or substituted  
31 service pursuant to section one thousand thirty-six of this article, the  
32 parent or other person legally responsible for the child's care may move  
33 to vacate the order of disposition and schedule a rehearing. Such motion  
34 shall be granted on an affidavit showing such relationship or responsi-  
35 bility and a meritorious defense to the petition, unless the child is  
36 alleged to be an abandoned newborn infant pursuant to section one thou-  
37 sand thirty-one-a of this article or the court finds that the parent or  
38 other person willfully refused to appear at the hearing, in which case  
39 the court may deny the motion.

40 § 7. The family court act is amended by adding a new section 1051-a to  
41 read as follows:

42 § 1051-a. Sustaining or dismissing a petition alleging a child is an  
43 abandoned newborn infant. (a) At the fact finding hearing scheduled  
44 pursuant to section one thousand thirty-one-a of this article, the court  
45 shall determine that the child is an abandoned newborn infant and  
46 sustain the petition filed under section one thousand thirty-one-a of  
47 this article if facts sufficient to constitute clear and convincing  
48 evidence are established to find that the child was five days old or  
49 younger when abandoned and that the child was left in a manner that  
50 indicated his or her parent's intent to wholly abandon such child by  
51 relinquishing and foregoing responsibility for and rights to the care  
52 and custody of such child with the intent that the child be safe from  
53 physical injury and cared for in an appropriate manner. For purposes of  
54 finding that the child was five days old or younger when abandoned, an  
55 affidavit or other official record of a determination of the licensed  
56 physician who examined the child that such child was five days old or

1 younger when abandoned within the meaning of accepted medical practice  
2 and the date of birth of the child, within a reasonable medical certain-  
3 ty; an affidavit or official record, including a police report or testi-  
4 mony regarding the manner of the abandonment of the child; and an affi-  
5 davit or official record of the result of the inquiries made to the  
6 putative father registry and to local law enforcement officials regard-  
7 ing a missing person report, shall be sufficient evidence of the child's  
8 age and date of birth and the intent to wholly abandon the child.

9 The court shall determine and find and shall state in its order:

10 (i) that the child was five days old or younger when abandoned within  
11 a reasonable medical certainty;

12 (ii) the date the child was born, within a reasonable medical certain-  
13 ty;

14 (iii) that the child was left in a manner that indicated his or her  
15 parent's intent to wholly abandon the child by relinquishing responsi-  
16 bility for and right to the care and custody of such child with the  
17 intent that the child be safe from physical injury and cared for in an  
18 appropriate manner;

19 (iv) that based upon the findings of paragraphs (i) and (iii) of this  
20 subdivision, aggravated circumstances within the meaning of subdivision  
21 (j) of section one thousand twelve of this article exist; and

22 (v) that based upon such finding of aggravated circumstances, reason-  
23 able efforts to return the child to his or her home are not required.

24 (b) If facts sufficient to sustain the petition are not established  
25 due to a determination that the child was older than a newborn infant at  
26 the time of abandonment, the court shall convert the petition to a  
27 proceeding to determine neglect pursuant to section one thousand thirty-  
28 one of this article and shall state on the record the grounds for the  
29 conversion. Temporary custody of the child shall continue until further  
30 order of the court.

31 (c) At the conclusion of the dispositional hearing that shall be  
32 commenced immediately upon completion of the fact-finding hearing, the  
33 court shall enter an order of disposition:

34 (i) placing the child in the custody of the local commissioner of  
35 social services in accord with the provisions of section one thousand  
36 fifty-five of this part, upon a determination that:

37 (1) continuation in the child's home would be contrary to the best  
38 interests of the child; and

39 (2) where the court has determined that the parent of such child has  
40 subjected the child to aggravated circumstances, reasonable efforts to  
41 prevent or eliminate the need for removing the child from the home of  
42 the child or to make it possible for the child to return safely to his  
43 or her home are not required.

44 (ii) requiring the local commissioner of social services to immediat-  
45 ely commence a proceeding to commit the guardianship and custody of such  
46 child to an authorized agency pursuant to section three hundred eighty-  
47 four-b of the social services law;

48 (iii) setting a date certain for the fact-finding and dispositional  
49 hearing regarding the petition filed pursuant to section three hundred  
50 eighty-four-b of the social services law to be held no later than sixty  
51 days subsequent to the date the order was made pursuant to this section  
52 determining the child to be an abandoned newborn infant;

53 (iv) setting a date certain for an initial permanency hearing to be  
54 held in conjunction with the dispositional hearing scheduled regarding  
55 the petition filed pursuant to section three hundred eighty-four-b of  
56 the social services law; provided, however, that such permanency hearing

1 shall be held no later than as provided in paragraph two of subdivision  
 2 (a) of section one thousand eighty-nine of this act; and

3 (v) requiring the local commissioner of social services to cause  
 4 notice of the proceeding instituted pursuant to section three hundred  
 5 eighty-four-b of the social services law to be published in accordance  
 6 with the provisions of rule three hundred sixteen of the civil practice  
 7 law and rules in the county in which such child was found. The notice  
 8 shall state:

9 (A) the date, time and purpose of the proceeding;

10 (B) the date, time and place that the abandoned newborn infant was  
 11 found;

12 (C) a description of the infant including its approximate date of  
 13 birth;

14 (D) that upon failure to appear, all parental rights of the parents of  
 15 such abandoned newborn infant shall be terminated;

16 (E) that a parent's failure to appear shall constitute a denial of his  
 17 or her interest in the child, which denial shall result, without further  
 18 notice, in the commitment of the custody and guardianship of the child  
 19 to the local commissioner of social services and in the child's  
 20 adoption; and

21 (F) the name, address, and telephone number of the person designated  
 22 by the local commissioner of social services to contact for information  
 23 regarding such child.

24 § 8. Subdivision (a) and paragraph (ii) of subdivision (b) of section  
 25 1055 of the family court act, subdivision (a) as amended by chapter 12  
 26 of the laws of 2006 and paragraph (ii) of subdivision (b) as amended by  
 27 section 18 of part A of chapter 3 of the laws of 2005, are amended to  
 28 read as follows:

29 (a) For purposes of section one thousand fifty-two of this part the  
 30 court may place the child in the custody of a relative or other suitable  
 31 person, or of the local commissioner of social services or of such other  
 32 officer, board or department as may be authorized to receive children as  
 33 public charges, or a duly authorized association, agency, society or in  
 34 an institution suitable for the placement of a child. For purposes of  
 35 section one thousand fifty-one-a of this article, the court may place  
 36 the child in the custody of the local commissioner of social services or  
 37 of such other officer, board or department as may be authorized to  
 38 receive children as public charges, or a duly authorized association,  
 39 agency, society or in an institution suitable for the placement of a  
 40 child. The court may also place the child in the custody of the local  
 41 commissioner of social services and may direct such commissioner to have  
 42 the child reside with a relative or other suitable person who has indi-  
 43 cated a desire to become a foster parent for the child and further  
 44 direct such commissioner, pursuant to regulations of the office of chil-  
 45 dren and family services, to commence an investigation of the home of  
 46 such relative or other suitable person within twenty-four hours and  
 47 thereafter expedite approval or certification of such relative or other  
 48 suitable person, if qualified, as a foster parent. If such home is found  
 49 to be unqualified for approval or certification, the local commissioner  
 50 shall report such fact to the court forthwith so that the court may make  
 51 a placement determination that is in the best interests of the child.

52 (ii) (A) Upon placing a child under the age of one, who has been aban-  
 53 doned as defined in paragraph (ii) of subdivision (f) of section one  
 54 thousand twelve of this article, with a local commissioner of social  
 55 services, the court shall, where either of the parents do not appear

56 after due notice, include in its order of disposition pursuant to

S. 4551

11

1 section one thousand fifty-two of this part, a direction that such  
2 commissioner shall promptly commence a diligent search to locate the  
3 child's non-appearing parent or parents or other known relatives who are  
4 legally responsible for the child, and to commence a proceeding to  
5 commit the guardianship and custody of such child to an authorized agen-  
6 cy pursuant to section three hundred eighty-four-b of the social  
7 services law, [~~six months~~] sixty days from the date that care and custo-  
8 dy of the child was transferred to the commissioner, unless there has  
9 been communication and visitation between such child and such parent or  
10 parents or other known relatives or persons legally responsible for the  
11 child. In addition to such diligent search the local commissioner of  
12 social services shall provide written notice to the child's parent or  
13 parents or other known relatives or persons legally responsible as  
14 provided for in this paragraph. Such notice shall be served upon such  
15 parent or parents or other known relatives or persons legally responsi-  
16 ble in the manner required for service of process pursuant to section  
17 six hundred seventeen of this act. Information regarding such diligent  
18 search, including, but not limited to, the name, last known address,  
19 social security number, employer's address and any other identifying  
20 information to the extent known regarding the non-appearing parent,  
21 shall be recorded in the uniform case record maintained pursuant to  
22 section four hundred nine-f of the social services law.

23 § 9. The family court act is amended by adding a new section 1061-a to  
24 read as follows:

25 § 1061-a. Custody claim by parent of an abandoned newborn infant. (a)  
26 At any time prior to the date certain set by the court for the fact-  
27 finding hearing regarding the petition to commit the guardianship and  
28 custody of the child to an authorized agency pursuant to section three  
29 hundred eighty-four-b of the social services law to be heard or at the  
30 hearing thereon, either parent may institute a proceeding pursuant to  
31 part three of article six of this act for custody of a child previously  
32 determined to be an abandoned newborn infant. Such proceeding shall be  
33 brought within the county where such infant was found.

34 (b) Prior to the date certain set by the court for the dispositional  
35 hearing of the petition filed to commit guardianship and custody of the  
36 child to an authorized agency pursuant to section three hundred eighty-  
37 four-b of the social services law, an alleged putative father may file a  
38 petition pursuant to this section in the county in which he resides,  
39 that alleges that he is the father of an infant whose whereabouts are  
40 unknown due to the concealment and probable abandonment of the infant by  
41 the respondent mother. The petition shall be served upon the mother  
42 seeking as its sole remedy, the location where the infant was abandoned.  
43 In lieu of an appearance at any hearing scheduled on such petition or  
44 any other petition regarding an infant determined to be an abandoned  
45 newborn infant, the respondent mother may file a sworn statement within  
46 ten days of service, disclosing the location the child was abandoned.  
47 The court may compel, by its powers of contempt, the disclosure of the  
48 infant's whereabouts. Prior to the date certain set by the court for the  
49 dispositional hearing for the petition filed to commit guardianship and  
50 custody of the child to an authorized agency pursuant to section three  
51 hundred eighty-four-b of the social services law, upon disclosure of the  
52 location of the infant's abandonment, the putative father may file a  
53 petition for a determination of paternity and for custody in the county  
54 where the child was found.

1 (c) The records and discovery procedures set forth in section one  
2 thousand thirty-eight of this article shall be applicable to a proceed-  
3 ing under this section.

4 (d) Failure of a parent to claim custody under this section prior to  
5 the date certain set by the court for dispositional hearing for the  
6 petition to commit guardianship and custody of the child to an author-  
7 ized agency pursuant to section three hundred eighty-four-b of the  
8 social services law shall irrevocably terminate all parental rights,  
9 free the child for adoption without further notice, and allow entry of  
10 an order pursuant to section three hundred eighty-four-b of the social  
11 services law committing the guardianship and custody of the abandoned  
12 newborn infant to an authorized agency or to a foster parent. Such order  
13 shall not be re-opened.

14 § 10. Paragraph (e) of subdivision 2 of section 111 of the domestic  
15 relations law, as amended by chapter 375 of the laws of 1997, is amended  
16 and a new paragraph (f) is added to read as follows:

17 (e) who has executed an instrument, which shall be irrevocable, deny-  
18 ing the paternity of the child, such instrument having been executed  
19 after conception and acknowledged or proved in the manner required to  
20 permit the recording of a deed[~~+~~]; or

21 (f) where such child has been determined to be an abandoned newborn  
22 infant pursuant to section one thousand fifty-one-a of the family court  
23 act.

24 § 11. Section 352 of the social services law is amended by adding a  
25 new subdivision 4 to read as follows:

26 4. The provisions of this section shall not apply to the parents of an  
27 abandoned newborn infant, as defined in subdivision (1) of section one  
28 thousand twelve of the family court act and section three hundred nine-  
29 ty-f of this chapter.

30 § 12. Subdivision 1 of section 352-a of the social services law is  
31 amended by adding a new paragraph (g) to read as follows:

32 (g) The provisions of this section shall not apply to the parents of  
33 an abandoned newborn infant as defined in subdivision (1) of section one  
34 thousand twelve of the family court act and section three hundred nine-  
35 ty-f of this chapter.

36 § 13. Subdivision 2 of section 371 of the social services law, as  
37 amended by chapter 666 of the laws of 1976, is amended and a new subdi-  
38 vision 2-a is added to read as follows:

39 2. "Abandoned child" means a child under the age of eighteen years who  
40 is abandoned by both parents, or by the parent having [~~its~~] his or her  
41 custody, or by any other person or persons lawfully charged with [~~its~~]  
42 his or her care or custody, in accordance with the definition and other  
43 criteria set forth in subdivision five of section three hundred eighty-  
44 four-b;

45 2-a. "Abandoned newborn infant" shall have the same meaning as is  
46 ascribed to such term by subdivision (1) of section one thousand twelve  
47 of the family court act and section three hundred ninety-f of this  
48 title;

49 § 14. Paragraph (ii) of subdivision 4-a of section 371 of the social  
50 services law, as added by chapter 782 of the laws of 1971, is amended to  
51 read as follows:

52 (ii) who has been abandoned by his or her parents or other person  
53 legally responsible for his or her care, but shall not include an aban-  
54 doned newborn infant.

1 § 15. The opening paragraph and paragraphs (b), (c) and (d) of subdivi-  
 2 sion 1 of section 372 of the social services law, are amended to read  
 3 as follows:

4 Every court, and every public board, commission, institution, or offi-  
 5 cer having powers or charged with duties in relation to abandoned chil-  
 6 dren, including abandoned infants and abandoned newborn infants, delin-  
 7 quent, destitute, neglected or dependent children who shall receive,  
 8 accept or commit any child shall provide and keep a record showing:

9 (b) his or her sex and date and place of birth, if ascertainable, or  
 10 his or her apparent age and in the case of an abandoned newborn infant,  
 11 the affidavit or other official record of the determination of a  
 12 licensed physician attesting that the child was five days old or younger  
 13 at the time of abandonment within the meaning of accepted medical prac-  
 14 tice and the date of birth of the child, to a reasonable medical  
 15 certainty,

16 (c) the full and true names and places of birth of his or her parents,  
 17 and their actual residence if living, or their latest known residence,  
 18 if deceased or whereabouts unknown and the name and actual residence of  
 19 any other person having custody of the child, as nearly as the same can  
 20 reasonably be ascertained, and in the case of an abandoned newborn  
 21 infant, a certified copy of the court order determining that the child  
 22 was an abandoned newborn infant pursuant to section one thousand fifty-  
 23 one-a of the family court act,

24 (d) the religious faith of the parents and of the child, if known,

25 § 16. Section 381 of the social services law, as amended by chapter  
 26 555 of the laws of 1978, is amended to read as follows:

27 § 381. Maternity homes; records and reports. Every hospital or  
 28 lying-in asylum whether incorporated or unincorporated where women or  
 29 girls may be received, cared for or treated during pregnancy or during  
 30 or after delivery and every person licensed to carry on like work under  
 31 the provisions of sections twenty-five hundred twenty to twenty-five  
 32 hundred twenty-three, inclusive, of the public health law shall keep a  
 33 record showing the full and true name and address including street and  
 34 number, if any, of every such woman or girl and of each child of such  
 35 woman or girl received, admitted or born on the premises[7]; the full  
 36 and true names and addresses and the religious faith of the parents of  
 37 every such child[7]; the dates of reception, admission or birth and of  
 38 discharge or departure of each such woman, girl or child[7]; the full  
 39 and true names and addresses of the person or persons by whom any such  
 40 child is removed or taken away[7]; the amount paid for the care of any  
 41 such woman, girl or child [and]; the full and true names and addresses  
 42 of the person or persons making such payment or payments; and [~~shall~~  
 43 ~~keep~~] such further record as may be required by regulations of the  
 44 [~~department~~] office of children and family services. The [~~department~~]  
 45 office of children and family services may, through its authorized  
 46 agents and employees, at all reasonable times, inspect and examine such  
 47 records and may require from such licensed person or from such hospital  
 48 and its directors, officers, trustees, employees, manager, superinten-  
 49 dent, owner or other person responsible for its operation, all informa-  
 50 tion in their possession with reference to any such child not taken away  
 51 or removed from such hospital by his or her parents or parent. Any  
 52 information received by an institution pursuant to this section from the  
 53 parent of a child determined to be an abandoned newborn infant, shall be  
 54 confidential and shall not be released except for the purposes of facil-  
 55 itating medical reimbursement in accordance with state and federal law

1 governing confidentiality of patient information or pursuant to a court  
2 order.

3 § 17. Paragraph (e) of subdivision 3 of section 384-b of the social  
4 services law, as amended by section 55 of part A of chapter 3 of the  
5 laws of 2005, is amended to read as follows:

6 (e) A proceeding under this section is originated by a petition on  
7 notice served upon the child's parent or parents, the attorney for the  
8 child's parent or parents and upon such other persons as the court may  
9 in its discretion prescribe. Such notice shall inform the parents and  
10 such other persons that the proceeding may result in an order freeing  
11 the child for adoption without the consent of or notice to the parents  
12 or such other persons. Such notice also shall inform the parents and  
13 such other persons of their right to the assistance of counsel, includ-  
14 ing any right they may have to have counsel assigned by the court in any  
15 case where they are financially unable to obtain counsel. The petition  
16 shall set forth the names and last known addresses of all persons  
17 required to be given notice of the proceeding, pursuant to this section  
18 and section three hundred eighty-four-c of this title, and there shall  
19 be shown by the petition or by affidavit or other proof satisfactory to  
20 the court that there are no persons other than those set forth in the  
21 petition who are entitled to notice pursuant to the provisions of this  
22 section or of section three hundred eighty-four-c of this title. When  
23 the proceeding is initiated in family court service of the petition and  
24 other process shall be made in accordance with the provisions of section  
25 six hundred seventeen of the family court act, and when the proceeding  
26 is initiated in surrogate's court, service shall be made in accordance  
27 with the provisions of section three hundred seven of the surrogate's  
28 court procedure act. When the proceeding is initiated on the grounds of  
29 abandonment of a child less than one year of age at the time of the  
30 transfer of the care and custody of such child to a local social  
31 services official, the court shall take judicial notice of efforts to  
32 locate the child's parents or other known relatives or other persons  
33 legally responsible pursuant to paragraph (ii) of subdivision (b) of  
34 section one thousand fifty-five of the family court act. The provisions  
35 of this paragraph shall not apply to a child determined to be an aban-  
36 doned newborn infant.

37 § 18. Subparagraph (iii) of paragraph (1) of subdivision 3 of section  
38 384-b of the social services law, as amended by chapter 145 of the laws  
39 of 2000, is amended and a new subparagraph (v) is added to read as  
40 follows:

41 (iii) For the purposes of this paragraph, the date of the child's  
42 entry into foster care is the earlier of sixty days after the date on  
43 which the child was removed from the home or the date the child was  
44 found by a court to be an abandoned newborn infant, or an abused or  
45 neglected child pursuant to article ten of the family court act.

46 (v) For the purposes of this paragraph, a petition for termination of  
47 parental rights shall be filed immediately and a hearing shall be held  
48 on the date certain by the court after its determination that the child  
49 is an abandoned newborn infant pursuant to section one thousand fifty-  
50 one-a of the family court act.

51 § 19. Subdivision 5 of section 384-b of the social services law is  
52 amended by adding a new paragraph (c) to read as follows:

53 (c) The provisions of this subdivision shall not apply to an abandoned  
54 newborn infant.

55 § 20. The social services law is amended by adding a new section 390-f  
56 to read as follows:

1 § 390-f. Abandoned newborn infants; special provisions. 1. A child is  
2 an "abandoned newborn infant" where a court of competent jurisdiction  
3 has determined pursuant to section one thousand fifty-one-a of the fami-  
4 ly court act that such child is an abandoned newborn infant.

5 2. (a) Notwithstanding any other provision of law, upon notification  
6 that an alleged abandoned newborn infant is found within the county or  
7 jurisdiction, the local commissioner of social services shall:

8 (i) immediately cause a physical examination of the child to be  
9 performed by a licensed physician to determine the health status of the  
10 child and the age and date of birth of the child to a reasonable medical  
11 certainty. The examining physician shall certify by affidavit or other  
12 official record his or her reasonable medical conclusion as to whether  
13 the child was five days old or younger when abandoned and the child's  
14 date of birth. The affidavit or other official record of the determi-  
15 nation of the physician shall be placed in the infant's records in place  
16 of those required by paragraph (b) of subdivision one of section three  
17 hundred seventy-two of this title; and

18 (ii) in the event that the child is determined by a physician pursuant  
19 to subparagraph (i) of this paragraph to have been five days old or  
20 younger at the time of abandonment, the local commissioner of social  
21 services shall within three business days commence a proceeding pursuant  
22 to section one thousand thirty-one-a of the family court act.

23 (b) Upon assumption of protective custody of a child alleged to be an  
24 abandoned newborn infant the local commissioner shall:

25 (i) provide necessary services or assistance, including authorizing a  
26 physician or hospital to provide emergency medical treatment or surgical  
27 procedures necessary to safeguard the life or health of the child; and

28 (ii) at the time of assumption of custody of the child, at the time of  
29 the fact finding hearing and at the time of the dispositional hearing  
30 regarding the petition to commit guardianship and custody of the child  
31 to an authorized agency pursuant to section three hundred eighty-four-b  
32 of this title, make inquiry of the putative father registry regarding  
33 the existence of a notice of intent filed with the registry that may  
34 pertain to the child and of local law enforcement officials regarding  
35 the existence of a missing person report that may pertain to the child.  
36 Notwithstanding any other provision of law, the local commissioner of  
37 social services shall not be required to pursue any other efforts to  
38 locate the parents or relatives of such child.

39 § 21. This act shall take effect December 31, 2007.

40 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-  
41 sion, section or part of this act shall be adjudged by any court of  
42 competent jurisdiction to be invalid, such judgment shall not affect,  
43 impair, or invalidate the remainder thereof, but shall be confined in  
44 its operation to the clause, sentence, paragraph, subdivision, section  
45 or part thereof directly involved in the controversy in which such judg-  
46 ment shall have been rendered. It is hereby declared to be the intent of  
47 the legislature that this act would have been enacted even if such  
48 invalid provisions had not been included herein.

49 § 3. This act shall take effect December 31, 2007; provided, however,  
50 that the applicable effective date of Parts A through C of this act  
51 shall be as specifically set forth in the last section of such Parts.

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

**BILL NUMBER:** S4551

**SPONSOR:** KRUGER

**TITLE OF BILL:**

An act to amend the social services law, in relation to compliance with federal requirements for other states to check prospective foster and adoptive parents against the statewide central register of child abuse and maltreatment (Part A); to amend the family court act, in relation to compliance with federal requirements pertaining to reasonable efforts in regard to identification of appropriate in-state and out-of-state placements for children removed from home (Part B); and to amend the family court act, the domestic relations law and the social services law, in relation to compliance with federal requirements to expedite permanency for abandoned infants (Part C)

**PURPOSE:**

This bill would make amendments to comply with federal requirements enacted by the Safe and Timely Interstate Placement of Foster Children Act of 2006, the Adam Walsh Child Protection and Safety Act of 2006 and the Child and Family Services Improvement Act of 2006.

**SUMMARY OF PROVISIONS:**

Section 1 of the bill indicates that this legislation is made up of components contained in Parts A, B and C. Each Part includes an effective date for the provisions contained in that Part.

Part A

Section 1 of Part A amends Social Services Law (SSL) § 422(4)(A) to add a new subparagraph (z) permitting an entity in another state with appropriate legal authority to request information from the statewide central register of child abuse and maltreatment (SCR) pursuant to 42 U.S.C. §671 (a)(20) in relation to the certification or approval of a person as a foster or adoptive parent.

Section 2 of Part A provides for an immediate effective date.

Part B

Section 1 of Part B amends Family Court Act (FCA) § 355.5(6) and (7) to provide that the foster parent, pre-adoptive parent or relative caring for the respondent has the right to be heard at a permanency hearing for a juvenile delinquent. The current statute provides that such persons have an opportunity to be heard. In addition, the court must consider appropriate in-state and out-of-state placements as part of the court's findings on reasonable efforts and determine that the development of the permanency plan included consultation with the respondent juvenile delinquent.

Section 2 of Part B amends FCA § 741-a to provide that the foster parent, preadoptive parent or relative caring for the respondent has the right to be heard at a permanency hearing for a person in need of supervision (PINS). The current statute provides that such persons have an opportunity to be heard.

Section 3 of Part B amends FCA § 756-a to provide that the court must consider appropriate in-state and out-of-state placements as part of the court's findings on reasonable efforts at a permanency hearing for a PINS and determine that the development of the permanency plan included consultation with the respondent PINS.

Section 4 of Part B amends FCA § 1039-b(b) to provide that the social services official must consider appropriate in-state and out-of-state placements as part of permanency planning for a child who is alleged to be abused, neglected or abandoned.

Section 5 of Part B amends FCA § 1040 to provide that the foster parent, preadoptive parent or relative caring for a child who is alleged to be abused, neglected or abandoned has the right to be heard at a permanency hearing. The current statute provides that such persons have an opportunity to be heard.

Section 6 of Part B amends FCA § 1052 to provide that the court must consider appropriate in-state and out-of-state placements as part of the court's findings on reasonable efforts, and to make other technical corrections based on the enactment of Chapter 3 of the Laws of 2005.

Section 7 of Part B amends FCA § 1089(b) to require that a child of suitable age and maturity receive a copy of the notice and pertinent information from the permanency hearing report.

Sections 8 and 9 of Part B amend FCA § 1089(c) to provide that the permanency plan include consideration of appropriate in-state and out-of-state placements.

Sections 10 and 11 of Part B amend FCA § 1089(d) to require age appropriate consultation with the child who is the subject of the permanency hearing and provide that the permanency plan include consideration of appropriate in-state and out-of-state placements.

Section 12 of Part B provides for an immediate effective date.

#### Part C

Section 1 of Part C adds a new FCA § 1012(1) providing a definition of an "abandoned newborn infant".

Section 2 of Part C amends FCA § 1012(f) to exclude abandoned newborn infants from the definition of a neglected child.

Section 3 of Part C adds a new FCA § 1031-a establishing a preliminary procedure for a determination that a child is an abandoned newborn infant.

Section 4 of Part C amends FCA § 1039-b(a) to allow petitions filed under section 1031-a of the FCA to include a motion requesting a finding that reasonable efforts to return a child to his or her home are unnecessary.

Section 5 of Part C amends FCA § 1041 to exclude a proceeding involving an alleged abandoned newborn infant from the requirement to serve notice on the parents of a child who is the subject of a child protective proceeding.

Section 6 of Part C amends FCA § 1042 to exclude a proceeding involving an alleged abandoned newborn infant from the provisions that permit an absent parent to vacate a disposition by the court.

Section 7 of Part C adds a new FCA § 1051-a requiring certain findings for the court to determine that a child is an abandoned newborn infant. Where the court makes such a finding, the local commissioner of social services is directed to immediately commence a proceeding pursuant to SSL § 384-b to terminate parental rights, and to publish information in

the local newspaper regarding the abandoned newborn infant and the time and place for the proceeding commenced pursuant to SSL § 384-b. Where the court does not determine that the child is an abandoned newborn infant, the matter is referred to the local commissioner of social services to commence a proceeding pursuant to FCA § 1031.

Section 8 of Part C amends FCA § 1055(b) to cross-reference new FCA § 1031-a and to exclude a child determined to be an abandoned newborn infant from the provisions applicable to an abandoned child who is under the age of one, and to expedite the timeframe to institute a proceeding pursuant to SSL § 384-b for an abandoned child under the age of one.

Section 9 of Part C adds a new FCA § 1061-a providing a process for the parent of an abandoned newborn infant to claim custody of his or her child.

Section 10 of Part C amends Domestic Relations Law (DRL) § 111 (2) to add an exception for an abandoned newborn infant to the current exceptions to the requirement that the parents must consent to the adoption of their child.

Section 11 of Part C amends SSL § 352 to exclude a child determined to be an abandoned newborn infant from the requirements that the local commissioner of social services locate and seek financial support from the parents of an abandoned child.

Section 12 of Part C amends SSL 352-a(1) to exclude a child determined to be an abandoned newborn infant from provisions requiring the local commissioner of social services to establish the paternity of, and seek child support for, a child born out of wedlock.

Section 13 of Part C renumbers SSL § 371(2) as § 371(2-a) and adds new § 371 (2-b) defining an abandoned newborn infant.

Section 14 of Part C amends SSL § 371(4-a) to exclude an abandoned newborn infant from the definition of a neglected child.

Section 15 of Part C amends SSL § 372(1) to define the type of records that must be kept regarding an abandoned newborn infant.

Section 16 of Part C amends SSL § 381 to provide confidentiality for any information obtained by a maternity home regarding the parent of an abandoned newborn infant.

Section 17 of Part C amends SSL § 384-b(3)(e) to specify that the parental notification requirements of FCA . 1051-a are not applicable to proceedings involving a child determined to be an abandoned newborn infant.

Section 18 of Part C amends SSL § 384-b(3)(1) to provide for termination of parental rights where the child has been determined to be an abandoned newborn infant.

Section 19 of Part C amends SSL § 384-b(5) to add a new paragraph (c) excluding an abandoned newborn infant from the requirement that the local district make diligent efforts to facilitate contact between an abandoned child and his or her parent.

Section 20 of Part C adds a new SSL § 390-f containing special requirements for the local social services district applicable to abandoned newborn infants.

Section 21 of Part C provides for an immediate effective date.

Section 2 of the bill provides for severability of the bill components and parts.

Section 3 of the bill provides for an immediate effective date.

#### **EXISTING LAW:**

##### Part A

SSL § 422 governs the operation of the SCR including those entities which are permitted access to information maintained by the SCR.

##### Part B

FCA § 355.5 provides for periodic permanency hearings for juvenile delinquents in residential placement.

FCA § 741-a provides the foster parent, pre-adoptive parent or relative caring for a respondent PINS with notice and opportunity to be heard at a permanency hearing pertaining to the respondent.

FCA § 756-a provides for periodic permanency hearings for PINS in residential placement.

FCA § 1039-b sets forth procedures for the social services district to request a court order providing that reasonable efforts to return a child who is alleged to be abused, neglected or abandoned are not required.

FCA § 1040 provides the foster parent, pre-adoptive parent or relative caring for a child alleged to be abused, neglect or abandoned with notice and opportunity to be heard at a permanency hearing pertaining to such child.

FCA § 1052 sets forth the dispositional alternatives available to the court upon adjudication of a child as abused, neglected or abandoned.

FCA § 1089 provides a process for periodic permanency hearings for children in foster care who are alleged or adjudicated to be abused, neglected, abandoned or who are freed for adoption.

#### Part C

FCA § 1012 defines terms used in Article 10 of the FCA pertaining to child protective proceedings.

FCA § 1039-b sets forth procedures for the social services district to request a court order providing that reasonable efforts to return a child who is alleged to be abused, neglected or abandoned are not required.

FCA § 1041 sets forth provisions where the fact finding hearing in a child protective proceeding may commence in the absence of the child's parent or person legally responsible for the child.

FCA § 1042 sets forth provisions where a parent or person legally responsible who was not present at the fact finding may seek a rehearing or to vacate the court's decision.

FCA § 1055 governs the procedures for placement into foster care of children alleged or adjudicated to be abused, neglected or abandoned.

DRL § 111 governs the consents necessary to free a child for adoption.

SSL § 352 sets forth special provisions governing the responsibilities of the social services district for deserted or abandoned children.

SSL § 352-a sets forth special provisions governing the responsibilities of the social services district for children born out of wedlock.

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

SSL § 372 governs records and reports of agencies with duties in relation to abandoned, delinquent, destitute, neglected or dependent children.

SSL § 381 sets forth the responsibilities of maternity homes which care for women and girls during and after pregnancy.

SSL § 384-b provides a procedure for the termination of parental rights under certain circumstances, including where the child has been in foster care for 15 of the last 22 months or the parent has abandoned the child for a period of six months.

#### LEGISLATIVE HISTORY:

This is a new bill.

#### STATEMENT IN SUPPORT

The Adam Walsh Child Protection and Safety Act of 2006, Public Law (PL.) 109-248 amends Social Security Act (Act) § 471 (a)(20) in several ways

with regard to the background checks for prospective foster and adoptive parents. One requirement is that each state must check any child abuse and neglect registry in every other state in which the prospective foster and adoptive parents and any other adult(s) living in the home have resided in the preceding five years. Currently, the confidentiality provisions of SSL § 422 prohibit New York from providing this information to another state, absent consent of the prospective foster and adoptive parents and any other adult(s) living in the home. Part A of this proposal will permit New York to release this information to an entity in another state with the appropriate legal authority to license, certify or otherwise approve foster and adoptive parents to comply with the federal mandate.

The Safe and Timely Interstate Placement of Foster Children Act of 2006 P.L. 109-239, modifies the existing Title IV -E State plan provisions related to reasonable efforts at § 471(a)(15) of the Act to specifically require a State to consider interstate placements in permanency planning decisions when appropriate (§ 471 (a)(15)(C); consider in-state and

out-of-state permanent placement options at permanency hearings (§ 471 (a)(15)(E)(i)); and identify appropriate in-state and out-of-state placements when using concurrent planning (§ 471 (a)(15)(F)). The new federal law also requires consideration of in-state and out-of-state placement options in permanency hearings. The amendments in Part B regarding consideration of in-state and out-of-state placements bring New York statute into compliance with the new federal mandate.

In addition, the Safe and Timely Interstate Placement of Foster Children Act of 2006 requires that foster parents, pre-adoptive parents and relative caregivers be provided the "right" to be heard in "any permanency proceeding", in lieu of the existing requirement for an opportunity to be heard in any review or hearing.

The Child and Family Services Improvement Act of 2006, P.L. 109-288, requires states to have procedural safeguards in place to require courts conducting permanency hearings to consult with children, if age-appropriate, regarding their permanency plans. These amendments are included in the definition of case review system in § 475(5)(C) of the Act. The proposal amends Article 10-A of the FCA regarding permanency hearings for children removed from their homes to require that a child deemed by the social services district, in consultation with the child's law guardian, to be of appropriate age and maturity, to receive both notice of the permanency hearing and pertinent information from the permanency hearing report to enable the child to be informed regarding his or her permanency plan. Part B also amends FCA §§ 355.5, 756-a and 1 089(d) with respect to the court findings and order to require the court to consider whether there was appropriate consultation with the child on the permanency plan, in compliance with the federal mandate.

Finally, the Child and Family Services Improvement Act also requires that the state have in place policies and administrative and judicial procedures to be used when children are abandoned at or shortly after birth and which enable permanent decisions to be made expeditiously with respect to the placement of the children.

When the Abandoned Infant Protection Act was enacted by New York in 2000, it provided an affirmative defense to criminal prosecution for a parent of an infant not more than five days old who has abandoned his or her child intending that the child be safe from harm by leaving the child with an appropriate person or in a suitable location and promptly notifying an appropriate person of the child's location. However, no changes were made to the FCA or the SSL that would expedite and finalize the freeing of these very young children for adoption. A local social

services district under current law is still required to search for the parents of the abandoned infant and bring them before the court in an abandonment proceeding. The infant must needlessly stay in foster care for at least six months before a petition may be filed to terminate parental rights to free the child for adoption.

This proposal clarifies and limits the steps that must be taken by local social services districts to search for the parents of abandoned newborns and infants. It does not change the provisions of the Abandoned Infant Protection Act or its narrow applicability to infants five days old or less. The proposal provides notice through publication in a newspaper to parents that parental rights will be irrevocably terminated if no action is taken to claim custody of the child. The proposal establishes a procedure to allow a putative father to establish parental rights and allows the child to be expeditiously freed for adoption if no parent steps forward. This proposal also would establish procedures to provide an expedited process for the adoption of children 12 months of age or younger who have been abandoned by their parents in any way. The bonding of an infant to its caregiver in the first year of life is critical to that child's later healthy wellbeing and ability to form emotional attachments throughout his or her life. By providing an expedited termination process, coupled with clarified procedures for notification of parents of the process, this proposal would allow these infant children to achieve more quickly the permanency so necessary for their healthy development.

The Abandoned Infant Protection Act of 2000 was enacted to save the lives of newborns by permitting the parents to leave these infants safely in a suitable location without risk of criminal prosecution. This legislation would improve the future of not only the infants covered by that Act but of all infants under the age of one by allowing them to be adopted into a permanent home without needlessly languishing in foster care.

**BUDGET IMPLICATIONS:**

OCFS may incur some administrative costs during the final quarter of State fiscal year 2007-08 to respond to requests from other states for SCR information on out-of-state prospective foster and adoptive parents. OCFS is unable to predict the number of requests that will be received from other states but it is anticipated that OCFS can accommodate any additional administrative costs within the 2007-08 Executive Budget. If New York State fails to enact the provisions set forth in this legislation, the State may jeopardize up to \$358 million in federal Title IV - E funding for foster care.

**EFFECTIVE DATE:**

This act shall take effect December 31, 2007.

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