

# STATE OF NEW YORK

7404

## IN SENATE

April 4, 2008

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 family court act and the social services law, in relation to reinstatement of parental rights and vacatur of commitment of guardianship and custody of children

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

1 Section 1. Article 6 of the family court act is amended by adding a  
2 new part 1-A to read as follows:

3 PART 1-A

4 VACATUR OF COMMITMENT OF GUARDIANSHIP AND CUSTODY;

5 REINSTATEMENT OF PARENTAL RIGHTS

6 Section 635. Petition to vacate a commitment of guardianship and custo-  
7 dy.

8 636. Originating a proceeding to vacate a commitment of guardi-  
9 anship and custody; service and venue.

10 637. Burden of proof and findings.

11 638. Order of vacatur.

12 639. Effect of order.

13 § 635. Petition to vacate a commitment of guardianship and custody.  
14 Vacatur of an order committing the guardianship and custody of a child  
15 to a local social services district or authorized agency so as to rein-  
16 state the rights of a parent or parents is an extraordinary remedy that  
17 may be requested by the attorney for the child, the local social  
18 services district or the authorized agency to whose custody and guardi-  
19 anship the child is committed, or the respondent or respondents whose  
20 parental rights the petition would seek to reinstate, where the follow-  
21 ing conditions are met:

22 (a) the guardianship and custody of the child was committed at least  
23 three years prior to the date of the filing of the petition for vacatur;  
24 and

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

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

4 (c) the child is fourteen years of age or older, remains under the  
5 jurisdiction of the family court, has not been adopted and if the  
6 child's attorney is not the petitioner, the child consents to the filing  
7 of the petition; and

8 (d) if the local social services district or authorized agency with  
9 custody and guardianship of the child, is not the petitioner, the social  
10 services district or authorized agency consents to the filing of the  
11 petition; and

12 (e) if the respondent or respondents whose parental rights the peti-  
13 tion seeks to reinstate is not the petitioner, the respondent or  
14 respondents whose parental rights the petition seeks to reinstate  
15 consent or consents to the filing of the petition.

16 § 636. Originating a proceeding to vacate a commitment of guardianship  
17 and custody; service and venue. (a) A proceeding to vacate the commit-  
18 ment of guardianship and custody shall be originated by a petition filed  
19 by the child's law guardian, by the social services district or author-  
20 ized agency to whose custody and guardianship the child was committed,  
21 or the respondent or respondents whose parental rights the petition  
22 seeks to reinstate.

23 (b) Such petition shall be served on the child's law guardian, the  
24 social services district or authorized agency to which the child was  
25 committed and the respondent or respondents whose parental rights are  
26 being reinstated, as well as the attorney or attorneys who represented  
27 the respondent or respondents in the proceeding for commitment of guar-  
28 dianship and custody.

29 (c) A certified copy of the order committing guardianship and custody  
30 and affidavits containing the consents required by section six hundred  
31 thirty-five of this part shall be attached to the petition.

32 (d) Upon the filing of a petition under this part, the court shall  
33 cause a summons to be issued to the child, the social services district  
34 or authorized agency to which the child was committed and to the  
35 respondent or respondents whose parental rights the petition seeks to  
36 reinstate, each of whom shall be a party to the proceeding. The summons  
37 shall be served in accordance with section six hundred seventeen of this  
38 article, accompanied by a copy of the petition, the order of commitment  
39 and the affidavits of consent.

40 (e) The petition shall be filed before the court that exercised juris-  
41 isdiction over the most recent permanency proceeding involving the child  
42 and shall be assigned, wherever practicable, to the family court judge  
43 who presided over that proceeding, or the proceeding for commitment of  
44 guardianship and custody.

45 (f) Wherever practicable, the child shall be represented by the law  
46 guardian that represented the child in the most recent permanency  
47 proceeding and the parent or parents shall be represented by the attor-  
48 ney or attorneys who represented the parent or parents in the proceeding  
49 for commitment of guardianship and custody. Where this is not practica-  
50 ble, or where the court grants a request by the law guardian or attorney  
51 or attorneys to be relieved, the court shall immediately assign a new  
52 law guardian, attorney or attorneys, as applicable.

53 § 637. Burden of proof and findings. The petitioner shall have the  
54 burden of proof by clear and convincing evidence that vacatur of the  
55 commitment of guardianship and custody of the child to the local social  
56 services district or authorized agency is in the child's best interests,

1 that the necessary parties consent to such vacatur as required by  
2 section six hundred thirty-five of this part and that reinstatement of  
3 the rights of the parent or parents is in the best interests of the  
4 child. The determination of the court shall take into account the  
5 following factors:

6 (a) the child's bond with the parent(s); and  
7 (b) the ability of the parent(s) to safely parent the child; and  
8 (c) the likelihood of the child being adopted, including the child's  
9 willingness to be adopted.

10 § 638. Order of vacatur. The basis for the court's decision shall be  
11 issued in writing and address the above factors. The order shall state  
12 whether custody of the child is being returned to the custody of the  
13 parent or if the child is to remain in the custody of the local social  
14 services district or authorized agency. If the child is to remain in the  
15 custody of the local social services district or authorized agency,  
16 permanency hearings shall be scheduled pursuant to section one thousand  
17 eighty-nine of this act.

18 § 639. Effect of order. The vacatur of the commitment of custody and  
19 guardianship of the child to the local social services district or  
20 authorized agency and reinstatement of one parent's rights shall have no  
21 effect upon the rights of a parent who is not the subject of the peti-  
22 tion to vacate or whose reinstatement of rights is found to not be in  
23 the best interests of the child.

24 § 2. The section heading of section 384-b of the social services law,  
25 as added by chapter 666 of the laws of 1976, is amended to read as  
26 follows:

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

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

31 13. A petition to revoke the commitment of guardianship and custody of  
32 a child whose parental rights have been terminated may be brought in  
33 accordance with part one-A of article six of the family court act.

34 § 4. This act shall take effect on the one hundred eightieth day after  
35 it shall have become a law.

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

**BILL NUMBER:** S7404

**SPONSOR:** KRUGER

**TITLE OF BILL:**

An act to amend the family court act and the social services law, in relation to reinstatement of parental rights and vacatur of commitment of guardianship and custody of children

**PURPOSE:**

This bill would allow the Family Court to vacate an order terminating parental rights and committing the custody and guardianship of a child to the local social services district or authorized agency, under extraordinary circumstances where the parties all consent and the Family Court determines that the reinstatement of parental rights is in the best interests of the child.

**SUMMARY OF PROVISIONS:**

Section 1 of the bill would amend Family Court Act (PCA) Article 6 by adding a new Part 1-A captioned: Vacatur of commitment of guardianship and custody; reinstatement of parental rights. Part 1-A consists of new FCA §§ 635, 636, 637, 638 and 639.

FCA § 635 would permit a petition to be filed under limited circumstances to vacate an order committing the custody and guardianship of a child to a local social services district or authorized agency following the termination of parental rights. A petition may be filed only where: the order was entered at least three years previous to the petition; the basis for the termination of parental rights was not severe or repeated abuse; and the child is 14 years or older, remains under the jurisdiction of the Family Court, has not been adopted, and consents to the vacatur.

FCA § 636 would describe who may file the petition originating the proceeding, where to file the petition and who must be served.

FCA § 637 would require that the petitioner prove by clear and convincing evidence that all of the necessary parties consent to the vacatur and that vacatur of the prior order and reinstatement of the parent's rights is in the best interest of the child. The Court's determination also must take into account the child's bond with the parent(s); the ability of the parent(s) to safely parent the child; and the likelihood that the child will be adopted and his or her willingness to be adopted.

FCA § 638 would require the Court to issue a written decision addressing the aforementioned factors and stating whether custody of the child is being returned to the parent or if physical custody of the child remains with the local social services district or authorized agency. If the child is not returned to the custody of the parent, the court must schedule a permanency hearing for no later than six months from the date of the order of vacatur.

FCA § 639 would provide that an order reinstating the rights of one parent has no effect upon the rights of the other parent.

Sections 2 and 3 of the bill would amend Social Services Law (SSL) § 384-b by recaptioning that section and adding a new subdivision 13 summarizing the vacatur procedure found in Part 1-A of Article 6 of the FCA

Section 4 of the bill provides for an effective date of 180 days after enactment.

**EXISTING LAW:**

FCA Article 6 addresses proceedings on permanent neglect, adoption,

custody and guardianship. FCA §§ 63 I through 634 set forth the dispositional alternatives the court may take upon a finding of permanent neglect

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

**LEGISLATIVE HISTORY:**

None..

**STATEMENT IN SUPPORT:**

The SSL and FCA provide a process to terminate the rights of a parent who abandons, permanently neglects or severely abuses his or her child, or who is unable to care for the child due to significant mental retardation or mental illness with minimal prospect for remission in the foreseeable future. The permanency goal of a child who is freed for adoption may be placement for adoption, referral for legal guardianship, permanent placement with a fit and willing relative, or placement in another planned permanent living arrangement that includes a significant connection to an adult who is willing to be a permanency resource for the child.

Unfortunately, there are a small number of cases where a child who is freed for adoption, is over the age of 14, and either remains in foster care without being adopted or refuses to consent to any adoption. These children may not wish to be adopted because of their continuing bond with their birth parent(s) and often leave foster care at age 18 to reside with their birth parent(s).

This bill would create a narrow exception to the finality of an order terminating parental rights and transferring the custody and guardianship of a child to the local social services district or authorized agency. The bill would have no impact on children who have been adopted. Nor does the bill open the door to frequent petitions to vacate prior termination decisions because a threshold requirement to filing a petition is the consent of the local social services district or authorized agency, the birth parent and the child, as appropriate. In addition, the petition may be granted only upon a determination by the court that vacatur is in the best interests of the child. The bill would not allow vacatur of the termination of parental rights where parental rights were terminated for severe or repeated abuse.

The bill would also make it possible for a child over the age of 14 to be reunited with a previously terminated birth parent in those rare instances where all parties consent and it is determined by the Family Court to be in that child's best interests.

**BUDGET IMPLICATIONS:**

Vacatur is an extraordinary remedy; however, there may be potential cost savings if a youth, who would otherwise be in foster care, is reunited with a parent.

**EFFECTIVE DATE:**

This legislation would take effect 180 days after enactment.

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