

STATE OF NEW YORK

7443

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 social services law and the family court act, in relation to destitute children; 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 companied by a parent or other legally responsible adult and is in a
9 state of want or suffering due to lack of sufficient food, clothing, or
10 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. The social services law is amended by adding a new section 384-d
17 to read as follows:

18 § 384-d. Care and custody of destitute children. 1. Initiation of
19 judicial proceeding. A social services commissioner who accepts as a
20 public charge the care of a child who appears to be a destitute child
21 shall within fourteen days of accepting the care of such child, file a
22 petition in the family court alleging that the child is a destitute
23 child and requesting that the court place the child in the temporary
24 care and custody of such commissioner while an investigation is
25 commenced to determine whether the child is an abused or neglected child

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

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1 subject to the provisions of article ten of the family court act or a
2 destitute child as defined in subdivision three of section three hundred
3 seventy-one of this title.

4 2. Contents of petition. The petition shall allege the basis for the
5 belief that the child is a destitute child; whether the whereabouts of
6 the parent, parents, guardian or other person legally responsible are
7 known, and if so, the alleged address of the parent, parents or guardi-
8 an; the address or addresses of any other known persons legally respon-
9 sible for the child and of any other relatives of the child. The peti-
10 tion shall contain a notice in conspicuous print providing that if the
11 child remains in foster care for fifteen of the most recent twenty-two
12 months, the agency may be required by law to file a petition to termi-
13 nate parental rights. The petition shall also set forth the efforts
14 which were made, prior to the placement of the child into foster care,
15 to prevent removal of the child from his or her home and the efforts
16 which were made prior to the filing of the petition to make it possible
17 for the child to return safely home. If such efforts were not made, the
18 petition shall set forth the reasons why these efforts were not made.
19 The petition shall request that a temporary order be made transferring
20 the care and custody of the child to the social services official.

21 3. Initial appearance. At the initial appearance:

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

23 (b) The court shall determine whether placement of the child in the
24 temporary care and custody of the local commissioner is in the best
25 interests of the child, whether it would be contrary to the welfare of
26 the child to continue in his or her own home, that where appropriate,
27 reasonable efforts were made prior to the placement of the child into
28 foster care to prevent removal of the child from his or her home and
29 that prior to the initiation of the court proceeding required to be held
30 by this subdivision, reasonable efforts were made to make it possible
31 for the child to return safely home and shall include such findings in
32 its order. If the court determines that reasonable efforts to prevent
33 the need for removal of the child from the home were not made but that
34 the lack of such efforts was appropriate under the circumstances, the
35 court order shall include such findings in its order.

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

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

39 (ii) set a return date for an investigation review proceeding within
40 forty-five days to review the investigation conducted by the local
41 social services district of the family circumstances of the child and to
42 determine whether the child is a destitute child within the meaning of
43 this section and section three hundred seventy-one of this title or
44 whether a motion must be made to substitute a petition under article ten
45 of the family court act; and

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

53 4. Notice. At the initial appearance and at any hearing thereafter,
54 the court may direct service of a notice of the proceeding and a copy of
55 the petition shall be made upon the parent, parents, or other legally
56 responsible person in such manner as the court may direct. In the event

1 the court determines that service by publication is necessary and orders
2 service by publication, service shall be made in accordance with the
3 provisions of rule three hundred sixteen of the civil practice law and
4 rules, provided, however, that a single publication of the summons or
5 other process with a notice as specified herein in only one newspaper
6 designated in the order shall be sufficient. In no event shall the whole
7 petition be published. The notice to be published with the summons or
8 other process shall state the date, time, place and purpose of the
9 proceeding.

10 5. Investigation review proceeding. At the investigation review
11 proceeding, the court shall:

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

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

16 (c) determine whether notice shall be made upon any parent or other
17 legally responsible person and the method of such notice;

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

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

23 6. Disposition and order. If the court determines that the child is a
24 destitute child within the meaning of section three hundred seventy-one
25 of this title, the court shall issue an order placing the child in the
26 care and custody of the local commissioner. Such order shall contain the
27 date certain previously set for the initial permanency hearing. Children
28 placed under this section shall be placed until the court completes the
29 initial permanency hearing. Should the court determine that placement
30 shall continue beyond completion of the initial permanency hearing,
31 subsequent permanency hearings shall be scheduled pursuant to paragraph
32 two of subdivision (a) of section one thousand eighty-nine of the family
33 court act.

34 § 3. Subdivision 1 of section 398 of the social services law is
35 amended to read as follows:

36 1. As to destitute children: Assume charge of and provide care and
37 support for any destitute child who cannot be properly cared for in his
38 or her home and file a petition to obtain custody of such child pursuant
39 to section three hundred eighty-four-d of this article.

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

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

44 (a) Investigate [~~the~~] any alleged neglect, abuse or abandonment of a
45 child, offer protective social services to prevent injury to the child,
46 to safeguard his or her welfare, and to preserve and stabilize family
47 life wherever possible and, if necessary, bring the case before the
48 family court for adjudication and care for the child until the court
49 acts in the matter and, in the case of an abandoned or destitute child,
50 shall promptly petition the family court to obtain custody of such
51 child.

52 § 5. Paragraph (b) of subdivision 2 of section 398 of the social
53 services law, as amended by chapter 555 of the laws of 1978, is amended
54 to read as follows:

55 (b) Receive and care for any child alleged to be neglected, abused
56 [~~or~~], abandoned or destitute who is temporarily placed in [~~his~~] the care

1 of the local commissioner by the family court pending adjudication by
2 such court of the alleged neglect, abuse [~~or~~], abandonment or finding
3 that the child is a destitute child, including the authority to estab-
4 lish, operate, maintain and approve facilities for such purpose in
5 accordance with the regulations of the [~~department~~] office of children
6 and family services; and receive and care for any neglected, abused
7 [~~or~~], abandoned or destitute child placed or discharged to [~~his~~] the
8 care of the local commissioner by the family court.

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

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

18 § 7. Paragraph (i) of subdivision 6 of section 398 of the social
19 services law is REPEALED.

20 § 8. Section 398-e of the social services law, as added by section 49
21 of part B of chapter 436 of the laws of 1997, is amended to read as
22 follows:

23 § 398-e. Eligibility for protective [~~service~~] and foster care
24 services.

25 (a) An alien child, including a non-qualified alien child, as deter-
26 mined by applicable federal statute and regulation, is eligible for
27 protective and foster care services for [~~adults and~~] children, to the
28 extent such person is otherwise eligible pursuant to this chapter and
29 the regulations of the [~~department~~] office of children and family
30 services.

31 (b) An alien, including a non-qualified alien, as determined by appli-
32 cable federal statute and regulation, is eligible for protective
33 services for adults, to the extent such person is otherwise eligible
34 pursuant to this chapter and the regulations of the office of children
35 and family services.

36 § 9. Subdivision (a) of section 249 of the family court act, as
37 amended by section 2 of part A of chapter 3 of the laws of 2005, is
38 amended to read as follows:

39 (a) In a proceeding under article three, seven, ten or ten-A of this
40 act or where a revocation of an adoption consent is opposed under
41 section one hundred fifteen-b of the domestic relations law or in any
42 proceeding under section three hundred fifty-eight-a, three hundred
43 eighty-three-c, three hundred eighty-four [~~or~~], three hundred eighty-
44 four-b or three hundred eighty-four-d of the social services law or when
45 a minor is sought to be placed in protective custody under section one
46 hundred fifty-eight of this act, the family court shall appoint a law
47 guardian to represent a minor who is the subject of the proceeding or
48 who is sought to be placed in protective custody, if independent legal
49 representation is not available to such minor. In any proceeding to
50 extend or continue the placement of a juvenile delinquent or person in
51 need of supervision pursuant to section seven hundred fifty-six or 353.3
52 of this act or any proceeding to extend or continue a commitment to the
53 custody of the commissioner of mental health or the commissioner of
54 mental retardation and developmental disabilities pursuant to section
55 322.2 of this act, the court shall not permit the respondent to waive
56 the right to be represented by counsel chosen by the respondent,

1 respondent's parent, or other person legally responsible for the
2 respondent's care, or by a law guardian. In any other proceeding in
3 which the court has jurisdiction, the court may appoint a law guardian
4 to represent the child, when, in the opinion of the family court judge,
5 such representation will serve the purposes of this act, if independent
6 legal counsel is not available to the child. The family court on its own
7 motion may make such appointment.

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

10 § 1086. Purpose. The purpose of this article is to establish uniform
11 procedures for permanency hearings for all children who are placed in
12 foster care pursuant to section three hundred fifty-eight-a, three
13 hundred eighty-four ~~[e]~~, three hundred eighty-four-a or three hundred
14 eighty-four-d of the social services law or pursuant to section one
15 thousand twenty-two, one thousand twenty-seven, or one thousand fifty-
16 two of this act; children who are directly placed with a relative pursu-
17 ant to section one thousand seventeen or one thousand fifty-five of this
18 act; and children who are freed for adoption. It is meant to provide
19 children placed out of their homes timely and effective judicial review
20 that promotes permanency, safety and well-being in their lives.

21 § 11. Subdivision (a) of section 1087 of the family court act, as
22 added by section 27 of part A of chapter 3 of the laws of 2005, is
23 amended to read as follows:

24 (a) "Child" shall mean a person under the age of eighteen who is
25 placed in foster care pursuant to section three hundred fifty-eight-a,
26 three hundred eighty-four ~~[e]~~, three hundred eighty-four-a or three
27 hundred eighty-four-d of the social services law or pursuant to section
28 one thousand twenty-two, one thousand twenty-seven, or one thousand
29 fifty-two of this act; or directly placed with a relative pursuant to
30 section one thousand seventeen or one thousand fifty-five of this act;
31 or who has been freed for adoption or a person between the ages of eigh-
32 teen and twenty-one who has consented to continuation in foster care.

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

35 § 1088. Continuing court jurisdiction. If a child is placed pursuant
36 to section three hundred fifty-eight-a, three hundred eighty-four, ~~[e]~~
37 three hundred eighty-four-a or three hundred eighty-four-d of the social
38 services law, or pursuant to section one thousand seventeen, one thou-
39 sand twenty-two, one thousand twenty-seven or one thousand fifty-two of
40 this act, or directly placed with a relative pursuant to section one
41 thousand seventeen or one thousand fifty-five of this act; or if the
42 child is freed for adoption pursuant to section three hundred eighty-
43 three-c, three hundred eighty-four or three hundred eighty-four-b of the
44 social services law, the case shall remain on the court's calendar and
45 the court shall maintain jurisdiction over the case until the child is
46 discharged from placement and all orders regarding supervision,
47 protection or services have expired. The court shall rehear the matter
48 whenever it deems necessary or desirable, or upon motion by any party
49 entitled to notice in proceedings under this article, or by the law
50 guardian for the child, and whenever a permanency hearing is required by
51 this article. While the court maintains jurisdiction over the case, the
52 provisions of section one thousand thirty-eight of this act shall
53 continue to apply.

54 § 13. Paragraph 2 of subdivision (a) of section 1089 of the family
55 court act, as amended by chapter 437 of the laws of 2006, is amended to
56 read as follows:

1 (2) All other permanency hearings. At the conclusion of the hearing
2 pursuant to section one thousand twenty-two, one thousand twenty-seven,
3 or one thousand fifty-two of this act or three hundred eighty-four-d of
4 the social services law, at which the child was remanded or placed and
5 upon the court's approval of a voluntary placement instrument pursuant
6 to section three hundred fifty-eight-a of the social services law, the
7 court shall set a date certain for an initial permanency hearing, advise
8 all parties in court of the date set and include the date in the order.
9 Orders issued in subsequent court hearings prior to the permanency hear-
10 ing, including, but not limited to, the order of placement issued pursu-
11 ant to section one thousand fifty-five of this act, or three hundred
12 eighty-four-d of the social services law, shall include the date certain
13 for the permanency hearing. The initial permanency hearing shall be
14 commenced no later than six months from the date which is sixty days
15 after the child was removed from his or her home; provided, however,
16 that if a sibling or half-sibling of the child has previously been
17 removed from the home and has a permanency hearing date certain sched-
18 uled within the next eight months, the permanency hearing for each child
19 subsequently removed from the home shall be scheduled on the same date
20 certain that has been set for the first child removed from the home,
21 unless such sibling or half-sibling has been removed from the home
22 pursuant to article three or seven of this act. The permanency hearing
23 shall be completed within thirty days of the scheduled date certain.

24 § 14. Subdivision (a) of section 1090 of the family court act, as
25 added by section 27 of part A of chapter 3 of the laws of 2005, is
26 amended to read as follows:

27 (a) If a law guardian for the child has been appointed by the family
28 court in a proceeding pursuant to section three hundred fifty-eight-a,
29 three hundred eighty-three-c, three hundred eighty-four, [~~or~~] three
30 hundred eighty-four-b or three hundred eighty-four-d of the social
31 services law, or article ten of this act, the appointment of the law
32 guardian shall continue without further court order or appointment,
33 unless another appointment of a law guardian has been made by the court,
34 until the child is discharged from placement and all orders regarding
35 supervision, protection or services have expired. All notices, reports
36 and motions required by law shall be provided to such law guardian. The
37 law guardian may be relieved of his or her representation upon applica-
38 tion to the court for termination of the appointment. Upon approval of
39 the application, the court shall immediately appoint another law guardi-
40 an to whom all notices, reports, and motions required by law shall be
41 provided.

42 § 15. This act shall take effect on the ninetieth day after it shall
43 have become a law.

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

BILL NUMBER: S7443

SPONSOR: KRUGER

TITLE OF BILL: An act to amend the social services law and the family court act, in relation to destitute children; and to repeal certain

provisions of the social services law relating thereto

PURPOSE: This bill would define "destitute child" and establish a court process to enable the local commissioner of social services to assume the care and custody of a destitute child.

SUMMARY OF PROVISIONS: Section 1 of this bill would amend Social Services Law (SSL) § 371(3) to clarify the definition of "destitute child."

Section 2 of the bill would add a new SSL § 384-d establishing a process whereby a local commissioner of social services would initiate a judicial proceeding to determine that a child is a destitute child and place the child in the commissioner's care and custody. A petition would be required to be filed within 14 days of a local social services commissioner accepting the care of a child who appears to be destitute. The court would: (1) appoint a law guardian to represent the child; (2) make findings necessary to claim Title IV-E reimbursement for the child's placement, (3) order an investigation of the family circumstances of the child; and (4) set return dates for an investigation review proceeding and a permanency hearing at the initial appearance. The court would review the results of the investigation into the family circumstances of the child and determine whether: (1) further investigation is needed; (2) a petition alleging abuse or neglect of the child should be filed; or (3) the child should be placed with the local commissioner of social services as a destitute child.

Sections 3 through 6 of the bill would amend SSL § 398(1), (2), & (6) pertaining to the powers and duties of a local commissioner of social services to add references to the responsibilities of the local commissioner for destitute children.

Section 7 of the bill would repeal SSL § 398(6)(i) pertaining to residential placement of destitute children between the ages of 16 and 18.

Section 8 of the bill would amend SSL § 398-c extending eligibility for foster care services to unqualified alien children.

Section 9 of the bill would amend Family Court Act (FCA) § 249 to add destitute children to the list of children entitled to representation by a law guardian.

Sections 10 through 13 of the bill would amend FCA Article 10-A to provide permanency hearings for destitute children in the same manner as permanency hearings are held for children placed in foster care under FCA Article 10 or voluntarily placed under the SSL.

Section 14 of the bill would amend FCA § 1090 to continue the appointment of a law guardian for a destitute child until the child is discharged from placement and all orders regarding supervision, protection, or services have expired.

Section 15 of the bill would provide for an effective date 90 days after enactment.

EXISTING LAW:

SSL § 371 defines terms used in article six of the SSL pertaining to children.

SSL § 398 sets forth the duties and responsibilities of the local commissioner of social services for abused, neglected, abandoned, destitute, and delinquent children and persons in need of supervision.

SSL § 398-e provides eligibility for protective services to children and adults.

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

FCA § 1086 sets out the purpose of the permanency hearing statute.

FCA § 1087 defines child for the purposes of the permanency hearing statute.

FCA § 1088 provides for continuing court jurisdiction over children placed into foster care voluntarily or pursuant to an abuse or neglect finding.

FCA § 1089 provides for the successive court review of children in foster care through regularly scheduled permanency hearings.

FCA § 1090 requires that the appointment of a law guardian for a child involved in an abuse and neglect proceeding or a voluntary placement continue until the child is discharged from placement and all orders regarding supervision, protection or services have expired.

LEGISLATIVE HISTORY: None.

STATEMENT IN SUPPORT: Children are sometimes found in localities throughout the State of New York without parents or other legally responsible people to care for them. These are often the neediest children. For example, a young child who was adopted from China by a single mother in New York City was found alone after her adoptive mother passed away. In addition, children who are the victims of human trafficking are also sometimes found within New York State without a family to care for them. These children are currently classified in the SSL as destitute. The current SSL requires that local social services districts assume care for these destitute children. However, there is no statutory process for bringing destitute children into the legal custody of the local commissioner of social services. Without a statutory scheme that reflects federally required court findings, children placed in the care of the local commissioner of social services are not eligible for Title IV-E funding. In addition, their placements are not subject to ongoing judicial oversight through the permanency hearing process. This bill would create a formal court process for these children to come into the custody of the local commissioner of social services in a manner that would make their placements eligible for Title IV-E reimbursement and provide the same level of judicial oversight granted to other children in foster care.

BUDGET IMPLICATIONS: Placement of these children would be eligible for payment under the foster care block grant. However, because foster care funding is a capped block grant, no additional state funding is required by this proposal. Provisions in the bill that require the court to make Title IV-E findings will enable federal participation in the costs of some of these placements.

EFFECTIVE DATE: This act would take effect 90 days after enactment
