

# STATE OF NEW YORK

7447

## 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, in relation to concurrent guardianship, custody and child protective proceedings

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

1 Section 1. Subdivision 1 of section 1017 of the family court act, as  
2 amended by section 10 of part A of chapter 3 of the laws of 2005, the  
3 opening paragraph as separately amended by chapter 671 of the laws of  
4 2005, is amended to read as follows:  
5 1. In any proceeding under this article, when the court determines  
6 that a child must be removed from his or her home, pursuant to part two  
7 of this article, or placed, pursuant to section one thousand fifty-five  
8 of this article~~[7]~~:  
9 (a) the court shall direct the local commissioner of social services  
10 to conduct an immediate investigation to locate any non-respondent  
11 parent of the child ~~[and any relatives of the child, including]~~, all of  
12 the child's grandparents, and all adult siblings and half-siblings of  
13 the child. The local department of social services shall attempt to  
14 locate all of the persons listed in this paragraph regardless of whether  
15 an appropriate placement resource has been secured for the child; and  
16 (b) the court shall also direct the local commissioner of social  
17 services to conduct an immediate investigation to locate, to the extent  
18 necessary to secure an appropriate placement resource for the child, all  
19 ~~[suitable]~~ other relatives or other suitable persons identified by any  
20 respondent parent or any non-respondent parent and any other relative or  
21 other suitable person identified by a child over the age of five as a  
22 relative who plays or has played a significant positive role in his or  
23 her life~~[, and]~~. The local social services district shall inform ~~[them]~~  
24 the relatives and suitable persons located pursuant to this section, in  
25 writing of the pendency of the proceeding and of the opportunity ~~[for~~  
26 ~~becoming]~~ to become foster parents or ~~[for seeking]~~ to seek custody ~~[or~~

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

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1 ~~care~~] of the child, and that the child may be adopted by foster parents  
2 if attempts at reunification with the birth parent are not required or  
3 are unsuccessful. The local commissioner of social services shall record  
4 the results of [~~such~~ the] investigation, including, but not limited to,  
5 the name, last known address, social security number, employer's address  
6 and any other identifying information to the extent known regarding  
7 [~~any~~ the] non-respondent parent, in the uniform case record maintained  
8 pursuant to section four hundred nine-f of the social services law. For  
9 the purpose of this section, "non-respondent parent" shall include a  
10 person entitled to notice of the pendency of the proceeding and of the  
11 right to intervene as an interested party pursuant to subdivision (d) of  
12 section one thousand thirty-five of this article, and a non-custodial  
13 parent entitled to notice and the right to enforce visitation rights  
14 pursuant to subdivision (e) of section one thousand thirty-five of this  
15 article.

16 (c) The court shall determine:

17 ~~[-(a)]~~ (i) whether there is a suitable non-respondent parent [~~or other~~  
18 ~~person related to the child~~], relative or other suitable person with  
19 whom such child may appropriately reside; and

20 ~~[-(b) in the case of a relative,]~~ (ii) whether such relative or other  
21 suitable person seeks approval as a foster parent pursuant to the social  
22 services law for the purposes of providing care for such child, or wish-  
23 es to provide free care and custody for the child under a direct place-  
24 ment made pursuant to this article during the pendency of [~~any orders~~  
25 ~~pursuant to this article~~] the proceeding.

26 § 2. Subparagraphs (i) and (ii) of paragraph (a) of subdivision 2 of  
27 section 1017 of the family court act, as amended by section 10 of part A  
28 of chapter 3 of the laws of 2005, are amended to read as follows:

29 (i) [~~place the child in the~~] grant an order of custody [~~of~~] or guardi-  
30 anship to such non-respondent parent, other relative or other suitable  
31 person pursuant to [~~article six of this act and conduct such other and~~  
32 ~~further investigations as the court deems necessary~~] section one thou-  
33 sand fifty-five-b of this article; or

34 (ii) place the child directly in the custody of such non-respondent  
35 parent, other relative or other suitable person pursuant to this article  
36 during the pendency of the proceeding or until further order of the  
37 court, whichever is earlier and conduct such other and further investi-  
38 gations as the court deems necessary; or

39 § 3. Section 1017 of the family court act is amended by adding a new  
40 subdivision 4 to read as follows:

41 4. An order placing a child with a relative or other suitable person  
42 pursuant to this section may not be granted unless the relative or other  
43 suitable person consents to the jurisdiction of the court. The court may  
44 place the person to whom custody of the child has been granted under  
45 supervision during the pendency of the proceeding. Such supervision  
46 shall be provided by a child protective agency, social services official  
47 or duly authorized agency. The court also may issue a temporary order of  
48 protection under subdivision (f) of section one thousand twenty-two,  
49 section one thousand twenty-three or section one thousand twenty-nine of  
50 this article. An order of supervision issued pursuant to this subdivi-  
51 sion shall set forth the terms and conditions that the relative or suit-  
52 able person must meet and the actions that the child protective agency,  
53 social services official or duly authorized agency must take to exercise  
54 such supervision.

1 § 4. Subdivision (a) of section 1052 of the family court act, as added  
2 by chapter 962 of the laws of 1970, paragraph (v) as amended by chapter  
3 1039 of the laws of 1973, is amended to read as follows:

4 (a) At the conclusion of a dispositional hearing under this article,  
5 the court shall enter an order of disposition[+] directing one or more  
6 of the following:

7 (i) suspending judgment in accord with section one thousand fifty-  
8 three of this part; or

9 (ii) releasing the child to the custody of his parents or other person  
10 legally responsible in accord with section one thousand fifty-four of  
11 this part; or

12 (iii) placing the child in accord with section one thousand fifty-five  
13 of this part; or

14 (iv) making an order of protection in accord with one thousand fifty-  
15 six of this part; or

16 (v) placing the respondent under supervision in accord with section  
17 one thousand fifty-seven of this part; or

18 (vi) granting custody of the child to relatives or suitable persons  
19 pursuant to section one thousand fifty-five-b of this part.

20 However, the court shall not enter an order of disposition combining  
21 placement of the child under paragraph (iii) of this subdivision with a  
22 disposition under paragraph (i) or (ii) of this subdivision. An order  
23 granting custody of the child pursuant to paragraph (vi) of this subdi-  
24 vision shall not be combined with any other disposition under this  
25 subdivision.

26 § 5. Subdivision (a) of section 1055 of the family court act, as  
27 amended by chapter 12 of the laws of 2006, is amended to read as  
28 follows:

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

48 (ii) An order placing a child directly in the custody of a relative or  
49 other suitable person pursuant to this part may not be granted unless  
50 the relative or other suitable person consents to the jurisdiction of  
51 the court. The court may place the person who has been granted custody  
52 of the child under supervision of a child protective agency, social  
53 services official or duly authorized agency during the pendency of the  
54 proceeding. The court also may issue an order of protection under  
55 section one thousand fifty-six of this part. An order of supervision  
56 issued pursuant to this subdivision shall set forth the terms and condi-

1 tions that the relative or suitable person must meet and the actions  
2 that the child protective agency, social services official or duly  
3 authorized agency must take to exercise such supervision.

4 § 6. The family court act is amended by adding a new section 1055-b to  
5 read as follows:

6 § 1055-b. Custody or guardianship with relatives or suitable persons  
7 pursuant to article six of this act. (a) After the completion of the  
8 fact-finding under this article the court may enter an order of disposi-  
9 tion granting custody or guardianship of the child to a relative or  
10 suitable person under article six of this act if:

11 (i) the relative or suitable person has filed a petition for custody  
12 or guardianship of the child pursuant to article six of this act; and

13 (ii) the court finds that granting custody or guardianship of the  
14 child to the relative or suitable person is in the best interests of the  
15 child and that the safety of the child will not be jeopardized if the  
16 respondent or respondents under the child protective proceeding are no  
17 longer under supervision or receiving services; and

18 (iii) the court finds that granting custody or guardianship of the  
19 child to the relative or suitable person under article six of this act  
20 will provide the child with a safe and permanent home; and

21 (iv) all parties to the child protective proceeding consent to the  
22 granting of custody or guardianship under article six of this act; or

23 (v) after a consolidated dispositional hearing on the child protective  
24 petition and the petition under article six of this act, the court finds  
25 that extraordinary circumstances exist that support granting an order of  
26 custody or guardianship under article six of this act.

27 (b) An order made in accordance with the provisions of this section  
28 shall set forth the required findings as described in paragraphs (ii)  
29 and (iii) of subdivision (a) of this section and shall constitute the  
30 final disposition of the child protective proceeding. Notwithstanding  
31 any other provision of law, the court shall not issue an order of super-  
32 vision nor may the court require the local department of social services  
33 to provide services to the respondent or respondents when granting  
34 custody or guardianship pursuant to article six of this act under this  
35 section.

36 (c) As part of the order granting custody or guardianship pursuant to  
37 article six of this act, the court may require that the local department  
38 of social services and the law guardian for the child receive notice of  
39 and be made parties to any subsequent proceeding to modify the order of  
40 custody or guardianship granted pursuant to the article six proceeding.

41 (d) An order entered in accordance with this section shall conclude  
42 the court's jurisdiction over the proceeding held pursuant to this arti-  
43 cle and the court shall not maintain jurisdiction over the parties for  
44 the purposes of permanency hearings held pursuant to article ten-A of  
45 this act.

46 § 7. The family court act is amended by adding a new section 1089-a to  
47 read as follows:

48 § 1089-a. Custody or guardianship with relatives or suitable persons  
49 pursuant to article six of this act. (a) Where the permanency plan is  
50 placement with a fit and willing relative, the court may entertain a  
51 petition filed by a relative or suitable person seeking custody or guar-  
52 dianship of the child under article six of this act and terminate the  
53 order pursuant to article ten of this act if:

54 (i) the relative or suitable person has not previously sought custody  
55 or guardianship of the child during the pendency of the article ten  
56 proceeding and the relative or suitable person is able to show a compel-

1 ling reason why he or she has not previously filed a petition for custo-  
2 dy or guardianship of the child pursuant to article six of this act or  
3 sought the direct custody of the child pursuant to article ten of this  
4 act; and  
5 (ii) the court finds that granting custody or guardianship of the  
6 child to the relative or suitable person is in the best interests of the  
7 child and that the termination of the order placing the child pursuant  
8 to article ten of this act will not jeopardize the safety of the child;  
9 and  
10 (iii) the court finds that granting custody or guardianship of the  
11 child to the relative or suitable person will provide the child with a  
12 safe and permanent home; and  
13 (iv) all parties to the proceeding consent to the issuance of an order  
14 of custody or guardianship under article six of this act and the termi-  
15 nation of the order of placement pursuant to article ten of this act; or  
16 (v) after a consolidated hearing on the permanency of the child and  
17 the petition under article six of this act, the court finds that  
18 extraordinary circumstances exist that support granting an order of  
19 custody or guardianship under article six of this act.  
20 (b) An order made in accordance with the provisions of this section  
21 shall set forth the required findings as described in subparagraphs (ii)  
22 and (iii) of subdivision (a) of this section and shall result in the  
23 termination of any orders in effect pursuant to article ten of this act  
24 or pursuant to this article. Notwithstanding any other provision of law,  
25 the court shall not issue an order of supervision nor may the court  
26 require the local department of social services to provide services to  
27 the respondent or respondents when granting custody or guardianship  
28 pursuant to article six of this act in accordance with this section.  
29 (c) As part of the order granting custody or guardianship to the rela-  
30 tive or suitable person pursuant to article six of this act, the court  
31 may require that the local department of social services and the law  
32 guardian for the child receive notice of and be made parties to any  
33 subsequent proceeding to modify the order of custody or guardianship  
34 granted pursuant to the article six proceeding.  
35 (d) Any order entered pursuant to this section shall conclude the  
36 court's jurisdiction over the article ten preceding and the court shall  
37 not maintain jurisdiction over the proceeding for further permanency  
38 hearings.  
39 § 8. This act shall take effect on the one hundred eightieth day after  
40 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:** S7447

**SPONSOR:** KRUGER

**TITLE OF BILL:** An act to amend the family court act, in relation to concurrent guardianship, custody and child protective proceedings

**PURPOSE:** This bill would allow a concurrent petition to be filed

under Family Court Act (FCA) Article 6 seeking custody or guardianship of a child who is the subject of a pending Article 10 child abuse or neglect proceeding or who is placed in foster care under Article 10. This bill would also expand the list of dispositional options in FCA § 1052 to include custody under Article 6 and to clarify which dispositions may be used in combination with others.

**SUMMARY OF PROVISIONS:**. Sections 1 and 2 of the bill would amend FCA § 1017 to clarify the requirement for an investigation by a local social services district to identify and locate grandparents, adult siblings and half-siblings of the child as well as other relatives and suitable persons who might be a placement resource for a child who is the subject of an abuse or neglect proceeding. Section 2 also would add a reference to new FCA § 1055-b in FCA § 1017.

Section 3 of the bill would add a new subdivision 4 to FCA, § 1017 to provide that a relative or other suitable person who has a child placed in his or her care pursuant to Article 10 must consent to the jurisdiction of the Family Court. This new subdivision also permits the Family Court to place such a relative or suitable person under the supervision of a child protective agency, social services official, or other authorized agency and to enter an order of protection.

Section 4 of the bill would amend the list of the dispositional options available to the Family Court in a child abuse or neglect proceeding under FCA § 1052(a) to include granting custody of the child to a relative or other suitable person under the newly-created FCA § 1055-b. This section would also delineate which dispositional options may be combined by the court.

Section 5 of the bill would amend FCA § 1055 to require that a relative or other suitable person who has a child placed in his or her care pursuant to Article 10 must consent to the jurisdiction of the Family Court. It also permits the court to place such a relative or suitable person under the supervision of a child protective agency, social services official, or other authorized agency and to enter an order of protection.

Section 6 of the bill would add a new FCA § 1055-b allowing a relative or suitable person to file an Article 6 custody or guardianship petition during the pendency of an Article 10 abuse or neglect proceeding. The Family Court judge may grant Article 6 custody or guardianship to such a person if the court finds that: (1) it would be in the best interests of the child; (2) ending supervision pursuant to Article 10 will not jeopardize the safety interests of the child; (3) the relative or suitable person will provide the child with a stable and permanent home; and (4) all parties to the Article 10 proceeding consent to the dismissal of the Article 10 and granting of Article 6 custody or guardianship. The court also may grant the petition if the court finds, after a consolidated hearing, that extraordinary circumstances exist to issue an order of custody or guardianship along with the other required findings.

Section 7 of the bill would add a new FCA § 1089-a to allow a relative or suitable person to file an Article 6 petition seeking custody or guardianship of a child at the permanency hearing stage of an Article 10 proceeding. The petitioner must show a compelling reason for not previously filing for custody or guardianship. The court must determine that

issuing an order of custody or guardianship is in the best interests of the child, does not jeopardize the child's safety, and is an appropriate permanency plan. If a custody order is issued pursuant to Article 6, the orders in effect under Article 10 and/or Article 10-A will end. The custody or guardianship order issued under Article 6 in any of the above circumstances may require the custodian or guardian to notify the parties to the Article 10 proceeding should any subsequent petition be filed to modify or vacate the order of custody or guardianship.

Section 8 of the bill would provide for an effective date of 180 days after the bill becomes a law.

**EXISTING LAW:** FCA § 1017 requires a local social services district to conduct an investigation to identify and attempt to locate any non-respondent parent and relatives of a child who is the subject of a child abuse or neglect proceeding

Part 5 of Article 10 of the FCA sets forth the procedures for entering orders following fact-finding and dispositional hearings in child abuse and neglect cases. Sections 1052 through 1059 describe the dispositional alternatives available to the court after a finding of abuse or neglect. FCA § 1052(a) lists the following possible dispositions: (1) suspended judgment; (2) release of the child to his or her parent; (3) placement of the child into the custody of a local commissioner of social services, authorized agency, relative or other suitable person; or (4) issue an order of protection or place the respondent under the supervision of the local social services district.

FCA § 1089 requires the Family Court to schedule and conduct regularly scheduled permanency hearings for a child who is placed outside of the home. At the permanency hearing, the court reviews the service plan for the child and the respondent, the child's permanency goal, and the efforts made by the local social services district in furtherance of the permanency goal.

**LEGISLATIVE HISTORY:**.. This is a new bill.

**STATEMENT IN SUPPORT:** Research shows that children who are at risk of placement in the foster care system often achieve better outcomes if they are placed with family members. However, current statutes and case law regarding when and how relatives may act as placement resources for children who are the subject of an abuse or neglect proceeding are unclear and, at times, conflicting. As a result, there are divergent practices around the state that sometimes prevent willing and able family members from caring for children outside of the foster care system. Some Family Courts will only place children with relatives under Article 10, whereas other Family Courts grant custody or guardianship to relatives under Article 6 of the FCA. In addition, some Family Courts question whether they have the authority to place relatives who are caring for children under Article 10 under the supervision of the applicable local social services district. This bill would establish clear procedures to enable appropriate family members or other suitable people to care for such children while protecting the children's safety. First, the bill would clarify the type of investigation that a local social services district must conduct when a child is removed from the home under Article 10. It specifies that the search for relatives must include all grandparents and any adult siblings of the child, regardless of whether a placement resource has been identified for the child. The bill further clarifies that a more extensive search for relatives and other suitable people identified by the parents and the child must

continue until an appropriate placement has been obtained for the child.. The district must notify the identified and located relatives or suitable persons, in writing, that the child will be placed outside of the home and that they may apply to become foster parents or to seek custody of the child.

Second, the bill would clarify the placement and other options available to protect a child. In many cases, a Family Court may place a child in the care of relatives pursuant to Article 10 because the permanency plan is to provide services to the parent and ultimately reunite the child with the parent. The bill would provide that relatives who assume the care of a child under Article 10 must submit to the jurisdiction of the court so that the court may determine whether to place the relatives under supervision or issue an order of protection requiring the relatives to restrict contact between the child and parent. These provisions provide a mechanism, in appropriate cases, for the child to be seen regularly by child protective workers to determine how the child is progressing and whether any restrictions on contact between the child and the parent are being followed.

At the same time, the bill would also recognize that some relatives interested in caring for a child are not in need of supervision and or support from a local social services district. This may occur, for example, when there is no need for services for the parent because there is no plan to reunify the child with the parent. In these cases, it may be appropriate to grant custody or guardianship of the child to relatives pursuant to Article 6 and conclude the Article 10 proceeding. To accommodate this result, the bill sets forth clear guidelines regarding when the use of an Article 6 custody order is appropriate including that the court make findings regarding the child's safety, best interests, and permanency before issuing such an order.

Finally, the bill would strengthen the dispositional options available to the Family Court under Article 10 by clarifying which options may be used together. It is common practice to combine in one order the placing a child out of the home with an order of supervision of the respondent by the local social services district. However, current statute does not clearly permit this. The bill clarifies that this is permissible. It also supports other creative approaches by local social services districts that may reduce the use of out of home placements, clarifying that a child may be returned home or placed with a relative or other suitable person with an order of supervision and/or an order of protection. At the same time, the bill precludes the use of those multiple dispositional options that are incongruent or that might place a child in danger. For these reasons, a disposition order could not combine placing a child outside of the home with the return of a child to the custody of the parent. Similarly, the court could not both place a child outside the home and issue a suspended judgment in the case. This latter requirement is necessary to protect the interests of the child by preserving the ability to commence a termination proceeding in the future should it become necessary as well as to meet federal requirements for Title IV-E funding for foster care. The bill would also provide that an order granting custody of a child to a relative or other suitable person cannot be combined with any other dispositional option.

**BUDGET IMPLICATIONS:** None.

**EFFECTIVE DATE:** This bill would take effect 180 days after enactment.

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