

# STATE OF NEW YORK

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5392--B

Cal. No. 193

2005-2006 Regular Sessions

## IN SENATE

May 18, 2005

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Introduced by Sen. MEIER -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services, Children and Families -- recommitted to the Committee on Social Services, Children and Families in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report, and to be reprinted as amended, retaining its place in the order of second report -- ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the social services law, in relation to termination of parental rights on the grounds of homicide of a parent or a sibling of the child; and to repeal certain provisions of such law relating thereto

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

1 Section 1. Subparagraph (i) of paragraph (1) of subdivision 3 of  
2 section 384-b of the social services law, as amended by chapter 145 of  
3 the laws of 2000, is amended to read as follows:  
4 (i) Notwithstanding any other law to the contrary, whenever: the child  
5 shall have been in foster care for fifteen months of the most recent  
6 twenty-two months; or a court of competent jurisdiction has determined  
7 the child to be an abandoned child; or the parent has been convicted of  
8 a crime as set forth in [~~subparagraph (v) of this paragraph~~] subdivision  
9 eight of this section, the authorized agency having care of the child  
10 shall file a petition pursuant to this section unless based on a case by  
11 case determination: (A) the child is being cared for by a relative or  
12 relatives; or (B) the agency has documented in the most recent case  
13 plan, a copy of which has been made available to the court, a compelling  
14 reason for determining that the filing of a petition would not be in the

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

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1 best interest of the child; or (C) the agency has not provided to the  
 2 parent or parents of the child such services as it deems necessary for  
 3 the safe return of the child to the parent or parents, unless such  
 4 services are not legally required.

5 § 2. Subparagraph (v) of paragraph (1) of subdivision 3 of section  
 6 384-b of the social services law is REPEALED.

7 § 3. Clause (A) of subparagraph (iii) of paragraph (a) of subdivision  
 8 8 of section 384-b of the social services law, as added by chapter 7 of  
 9 the laws of 1999, is amended to read as follows:

10 (A) the parent of such child has been convicted of murder in the first  
 11 degree as defined in section 125.27, murder in the second degree as  
 12 defined in section 125.25, manslaughter in the first degree as defined  
 13 in section 125.20, or manslaughter in the second degree as defined in  
 14 section 125.15, and the victim of any such crime was another child of  
 15 the parent or another child for whose care such parent is or has been  
 16 legally responsible as defined in subdivision (g) of section one thou-  
 17 sand twelve of the family court act, or another parent of the child,  
 18 unless the convicted parent was a victim of physical, sexual or psycho-  
 19 logical abuse by the decedent parent and such abuse was a factor in  
 20 causing the homicide; or has been convicted of an attempt to commit any  
 21 of the foregoing crimes, and the victim or intended victim was the child  
 22 or another child of the parent or another child for whose care such  
 23 parent is or has been legally responsible as defined in subdivision (g)  
 24 of section one thousand twelve of the family court act, or another  
 25 parent of the child, unless the convicted parent was a victim of phys-  
 26 ical, sexual or psychological abuse by the decedent parent and such  
 27 abuse was a factor in causing the attempted homicide;

28 § 4. This act shall take effect on the ninetieth day after it shall  
 29 have become a law and shall apply to termination of parental rights  
 30 petitions filed on or after such effective date.

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

**BILL NUMBER:** S5392B

**SPONSOR:** MEIER

**TITLE OF BILL:** An act to amend the social services law, in relation to termination of parental rights on the grounds of homicide of a parent or a sibling of the child; and to repeal certain provisions of such law relating thereto

This is one in a series of measures being introduced at the request of the Chief Administrative Judge upon the recommendation of his Family Court Advisory and Rules Committee.

Few cases can be said to pose a greater challenge to the strong constitutional and statutory primacy of birth parents' rights than that of a child whose parent has been convicted of homicide, either of another child in the home or of another parent. Enactment of the Lee Ann Cruz Act in 1998, its amendment in 1999 and its inclusion in the New York State version of the Uniform Child Custody Jurisdiction and Enforcement

Act in 2001, reflected the Legislature's clear determination that, notwithstanding ties of blood, parents convicted of such crimes should be presumptively denied custody of, or visitation with, their surviving children. See L. 1998, c. 150; L. 1999, c. 378; L. 2001, c. 386. This strong statement of public policy was evident as well in the Legislature's enactment in 1999 of the statute implementing the federal Adoption and Safe Families Act

Pl. 105-89 and its 2000 amendment. A

conviction for homicide of a child was included as a presumptive ground for the Family Court to order child care agencies to dispense with reasonable efforts to reunify families and as a form of severe abuse constituting a ground for termination of parental rights; a conviction for homicide or other violent felony was also included as presumptive evidence of disqualification to be a foster or adoptive parent. See L. 1999, c. 7; L. 2000, c. 145. However, the termination of parental rights statute in New York continues to be an incomplete reflection of this policy determination and its flaws have impeded the achievement of permanency for children whose tragic cases make them among those most in need.

On the advice of our Advisory Committee, we are proposing legislation to fill the gaps in the severe abuse statute, Social Services Law §384-b(8), to better fulfill the State's strong public policy underlying the Adoption and Safe Families Act precept that the "safety of the child is paramount." First, the measure would add a conviction for homicide of the child's other parent as a ground for termination of parental rights. As in the law presumptively rendering individuals with such convictions ineligible to be foster or adoptive parents, an exception would be provided where the convicted parent "was a victim of physical, sexual or psychological abuse by the decedent parent and such abuse was a factor in causing the homicide." See Social Services Law §378-a(2)(j).

Addition of the cross-reference to the definition of individuals who can be charged with child neglect or abuse would foster consistency in the statutory framework by making clear that homicide of a child by a person who is the child's custodian or guardian or who "continually or at regular intervals

is found in the same household as the child ..." would be grounds for terminating the convicted parent's rights over his or her surviving child. No longer would an agency have the burden of proving permanent neglect (failure of the parent to plan for or contact the child), because of the inapplicability of the severe abuse statute as written. For example, in *Matter of Kyle M.*, 5 AD.3d 489 (2d Dept., 2004), the Appellate Division, Second Department upheld a permanent neglect finding against a mother who had been convicted of fatally strangling her three year old nephew, who was entrusted to her care - a case that could have been addressed more simply and expeditiously had our proposal been the law at the time. In support of the finding that reasonable efforts to reunite the family would have been pointless in such an egregious case, the Court quoted the Court of Appeals' decision in *Matter of Marino S.*, 100 N.Y.2d 361, 372 (2003), cert. denied, 124 S.Ct. 834 (2003):

When a child's best interests are endangered ...the State's strong interest in avoiding extended foster care and expediting permanency planning may properly excuse the futile exercise of making efforts toward reuniting a family that, in the end should not and will not be

reunited.

This measure would have no fiscal impact upon the public treasury. It would take effect on the nineteenth day after it shall have become a law and shall apply to termination of parental rights petitions filed on or after such effective date.

**2005-06 LEGISLATIVE HISTORY:**

Senate 5392-A (Meir)

**Passed**

Assembly 11582-A (M. of A. Rivera, et at)

**Codes**

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