

STATE OF NEW YORK

7888

IN SENATE

May 11, 2006

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 Judiciary

AN ACT to amend the family court act, the social services law and the domestic relations law, in relation to ensuring "one family, one judge" in adoption, surrender and termination of parental rights proceedings

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

1 Section 1. Paragraph (iv) of subdivision (a) of section 115 of the
2 family court act, as amended by chapter 409 of the laws of 2002, is
3 amended to read as follows:

4 (iv) proceedings to permanently terminate parental rights to guardian-
5 ship and custody of a child: (A) by reason of permanent neglect, as set
6 forth in part one of article six of this act and paragraph (d) of subdivi-
7 sion four of section three hundred eighty-four-b of the social
8 services law, ~~and~~ (B) by reason of mental illness, mental retardation
9 and severe or repeated child abuse, as set forth in paragraphs (c) and
10 (e) of subdivision four of section three hundred eighty-four-b of the
11 social services law, and (C) by reason of the death of one or both
12 parents, where no guardian of the person of the child has been lawfully
13 appointed, or by reason of abandonment of the child for a period of six
14 months immediately prior to the filing of the petition, where a child is
15 under the jurisdiction of the family court as a result of a placement in
16 foster care by the family court pursuant to article ten or ten-A of this
17 act or section three hundred fifty-eight-a of the social services law,
18 unless the court declines jurisdiction pursuant to section three hundred
19 eighty-four-b of the social services law;

20 § 2. Paragraph (a) of subdivision 3 of section 383-c of the social
21 services law, as added by chapter 479 of the laws of 1990, is amended to
22 read as follows:

23 (a) A surrender of a child to an authorized agency for the purpose of
24 adoption may be executed and acknowledged before a judge of the family
25 court or a surrogate in this state. If the child being surrendered is

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

LBD11548-04-6

1 in foster care as a result of a proceeding before the family court
2 pursuant to article ten or ten-A of the family court act or section
3 three hundred fifty-eight-a of this chapter, the surrender shall be
4 executed and acknowledged before the family court that exercised juris-
5 isdiction over such proceeding and, shall be assigned, wherever practica-
6 ble, to the judge who last presided over such proceeding. A surrender
7 executed and acknowledged before a court in another state shall satisfy
8 the requirements of this section if it is executed by a resident of the
9 other state before a court of record which has jurisdiction over
10 adoption proceedings in that state, and a certified copy of the tran-
11 script of that proceeding, showing compliance with paragraph (b) of this
12 subdivision, is filed as part of the adoption proceeding in this state.

13 § 3. The opening paragraph of paragraph (b) of subdivision 4 of
14 section 383-c of the social services law, as amended by chapter 480 of
15 the laws of 1990, is amended to read as follows:

16 The authorized agency to which the child was surrendered shall file an
17 application for approval of the extra-judicial surrender with the court
18 in which the adoption proceeding is expected to be filed or, if not
19 known, the family or surrogate's court in the county in which the agency
20 has its principal office. If the child being surrendered is in foster
21 care as a result of a proceeding before the family court pursuant to
22 article ten or ten-A of the family court act or section three hundred
23 fifty-eight-a of this chapter, the application shall be filed in the
24 family court that exercised jurisdiction over such proceeding and, shall
25 be assigned, wherever practicable, to the judge who last presided over
26 such proceeding. The application shall be filed no later than fifteen
27 days after execution of such surrender. The application shall be accom-
28 panied by affidavits from all the witnesses before whom the surrender
29 was executed and acknowledged as provided for in paragraph (a) of this
30 subdivision, stating:

31 § 4. The opening paragraph of subdivision 3 of section 384 of the
32 social services law, as amended by chapter 479 of the laws of 1990, is
33 amended to read as follows:

34 The instrument herein provided shall be [~~signed~~] executed and [~~shall~~
35 ~~be~~] acknowledged [~~or executed~~] (a) before any judge or surrogate in this
36 state having jurisdiction over adoption proceedings, except that if the
37 child is being surrendered as a result of, or in connection with, a
38 proceeding before the family court pursuant to article ten or ten-A of
39 the family court act, the instrument shall be executed and acknowledged
40 in the family court that exercised jurisdiction over such proceeding and
41 shall be assigned, wherever practicable, to the judge who last presided
42 over such proceeding; or (b) in the presence of one or more witnesses
43 and acknowledged by such witness or witnesses, in the latter case before
44 a notary public or other officer authorized to take proof of deeds, and
45 shall be recorded in the office of the county clerk in the county where
46 such instrument is executed, or where the principal office of such
47 authorized agency is located, in a book which such county clerk shall
48 provide and shall keep under seal. Such record shall be subject to
49 inspection and examination only as provided in subdivisions three and
50 four of section three hundred seventy-two of this title. Notwithstand-
51 ing any other provision of law, if the parent surrendering the child for
52 adoption is in foster care the instrument shall be executed before a
53 judge of the family court.

54 § 5. Subdivision 4 of section 384 of the social services law, as
55 amended by chapter 479 of the laws of 1990, is amended to read as
56 follows:

1 4. Upon petition by an authorized agency, a judge of the family court,
2 or a surrogate, may approve such surrender, on such notice to such
3 persons as the surrogate or judge may in his or her discretion
4 prescribe. If the child is being surrendered as a result of, or in
5 connection with, a proceeding before the family court pursuant to arti-
6 cle ten or ten-A of the family court act, the petition shall be filed in
7 the family court that exercised jurisdiction over such proceeding and
8 shall be assigned, wherever practicable, to the judge who last presided
9 over such proceeding. The petition shall set forth the names and last
10 known addresses of all persons required to be given notice of the
11 proceeding, pursuant to section three hundred eighty-four-c of this
12 title, and there shall be shown by the petition or by affidavit or other
13 proof satisfactory to the court that there are no persons other than
14 those set forth in the petition who are entitled to notice pursuant to
15 such section. No person who has received such notice and been afforded
16 an opportunity to be heard may challenge the validity of a surrender
17 approved pursuant to this subdivision in any other proceeding. However,
18 this subdivision shall not be deemed to require approval of a surrender
19 by a surrogate or judge for such surrender to be valid.

20 § 6. Paragraphs (c) and (d) of subdivision 3 of section 384-b of the
21 social services law, paragraph (c) as amended by chapter 607 of the laws
22 of 1996, and paragraph (d) as amended by chapter 739 of the laws of
23 1981, are amended and a new paragraph (c-1) is added to read as follows:

24 (c) [~~Unless a proceeding under this section is brought in the surro-~~
25 ~~gate's court, where~~] Where a child was placed or continued in foster
26 care pursuant to article ten or ten-A of the family court act or section
27 three hundred fifty-eight-a of this chapter, a proceeding under this
28 section shall be originated in the family court in the county in which
29 the proceeding pursuant to article ten or ten-A of the family court act
30 or section three hundred fifty-eight-a of this chapter was last heard
31 and shall be assigned, wherever practicable, to the judge who last heard
32 such proceeding. Where multiple proceedings are commenced under this
33 section concerning a child and one or more siblings or half-siblings of
34 such child, placed or continued in foster care with the same commis-
35 sioner pursuant to section [~~ten hundred~~] one thousand fifty-five or one
36 thousand eighty-nine of the family court act, all of such proceedings
37 may be commenced jointly in the family court in any county which last
38 heard a proceeding under article ten or ten-A of the family court act
39 regarding any of the children who are the subjects of the proceedings
40 under this section. In such instances, the case shall be assigned, wher-
41 ever practicable, to the judge who last [~~heard~~] presided over such
42 proceeding. In any other case, a proceeding under this section, includ-
43 ing a proceeding brought in the surrogate's court, shall be originated
44 in the county where either of the parents of the child reside at the
45 time of the filing of the petition, if known, or, if such residence is
46 not known, in the county in which the authorized agency has an office
47 for the regular conduct of business or in which the child resides at the
48 time of the initiation of the proceeding. To the extent possible, the
49 court shall, when appointing a law guardian for the child, appoint a law
50 guardian who has previously represented the child.

51 (c-1) Before hearing a petition under this section, the court in which
52 the termination of parental rights petition has been filed shall ascer-
53 tain whether the child is under the jurisdiction of a family court
54 pursuant to a placement in a child protective or foster care proceeding
55 or continuation in out-of-home care pursuant to a permanency hearing
56 and, if so, which court exercised jurisdiction over the most recent

1 proceeding. If the court determines that the child is under the juris-
2 isdiction of a different family court, the court in which the termination
3 of parental rights petition was filed shall stay its proceeding for not
4 more than thirty days and shall communicate with the court that exer-
5 cised jurisdiction over the most recent proceeding. The communication
6 shall be recorded or summarized on the record by the court in which the
7 termination of parental rights petition was filed. Both courts shall
8 notify the parties and law guardian, if any, in their respective
9 proceedings and shall give them an opportunity to present facts and
10 legal argument or to participate in the communication prior to the issua-
11 nce of a decision on jurisdiction. The court that exercised jurisdic-
12 tion over the most recent proceeding shall determine whether it will
13 accept or decline jurisdiction over the termination of parental rights
14 petition. This determination of jurisdiction shall be incorporated into
15 an order regarding jurisdiction that shall be issued by the court in
16 which the termination of parental rights petition was filed within thir-
17 ty days of such filing. If the court that exercised jurisdiction over
18 the most recent proceeding determines that it should exercise jurisdic-
19 tion over the termination of parental rights petition, the order shall
20 require that the petition shall be transferred to that court forthwith
21 but in no event more than thirty-five days after the filing of the peti-
22 tion. The petition shall be assigned, wherever practicable, to the
23 judge who heard the most recent proceeding. If the court that exercised
24 jurisdiction over the most recent proceeding declines to exercise juris-
25 isdiction over the adoption petition, the court in which the termination
26 of parental rights petition was filed shall issue an order incorporating
27 that determination and shall proceed forthwith.

28 (d) The family court shall have exclusive, original jurisdiction over
29 any proceeding brought upon grounds specified in paragraph (c), (d) or
30 (e) of subdivision four of this section, and the family court and surro-
31 gate's court shall have concurrent, original jurisdiction over any
32 proceeding brought upon grounds specified in paragraph (a) or (b) of
33 subdivision four of this section, except as provided in paragraphs (c)
34 and (c-1) of this subdivision.

35 § 7. Subdivision 3 of section 113 of the domestic relations law, as
36 amended by chapter 531 of the laws of 1998, is amended to read as
37 follows:

38 3. (a) The agreement of adoption shall be executed by such authorized
39 agency.

40 (b)(i) If the adoption petition is filed pursuant to subdivision eight
41 of section one hundred twelve of this article or subdivision ten of
42 section three hundred eighty-three-c or subdivision eleven of section
43 three hundred eighty-four-b of the social services law, the petition
44 shall be filed in the county where the termination of parental rights
45 proceeding or judicial surrender proceeding, as applicable, is pending
46 and shall be assigned, wherever practicable, to the same judge.

47 (ii) In any other agency adoption proceeding, the petition shall be
48 filed in the same court and, wherever practicable, shall be assigned to
49 the same judge of the county in which parental rights had been termi-
50 nated [or], a judicial surrender had been approved or the most recent
51 proceeding under article ten or ten-A of the family court act or section
52 three hundred fifty-eight-a of the social services law had been heard,
53 whichever occurred last, or in the county where the adoptive parents
54 reside or, if such adoptive parents do not reside in this state, in the
55 county where such authorized agency has its principal office. The
56 following procedures shall be applicable in cases where the child is

1 under the jurisdiction of a family court, but where the adoption peti-
2 tion has been filed in a court other than the court that presided over
3 the termination of parental rights, surrender or most recent proceeding
4 under article ten or ten-A of the family court act or section three
5 hundred fifty-eight-a of the social services law, whichever occurred
6 last:

7 (A) Before hearing such an adoption proceeding, the court in which the
8 adoption petition was filed shall ascertain whether the child is under
9 the jurisdiction of a family court as a result of a placement under
10 article ten or ten-A of the family court act or section three hundred
11 fifty-eight-a of the social services law, a surrender under section
12 three hundred eighty-three-c or three hundred eighty-four of the social
13 services law or an order committing guardianship and custody under arti-
14 cle six of the family court act or section three hundred eighty-four-b
15 of the social services law, and, if so, which court exercised jurisdic-
16 tion over the most recent permanency or other proceeding involving the
17 child.

18 (B) If the court determines that the child is under the jurisdiction
19 of a different family court, the court in which the adoption petition
20 was filed shall stay its proceeding for not more than thirty days and
21 shall communicate with the family court judge who exercised jurisdiction
22 over the most recent permanency or other proceeding involving the child.
23 The communication shall be recorded or summarized on the record by the
24 court in which the adoption petition was filed. Both courts shall notify
25 the parties and law guardian, if any, in their respective proceedings
26 and shall give them an opportunity to present facts and legal argument
27 or to participate in the communication prior to the issuance of a deci-
28 sion on jurisdiction.

29 (C) The family court judge who exercised jurisdiction over the most
30 recent permanency or other proceeding involving the child shall deter-
31 mine whether he or she should assume or decline jurisdiction over the
32 adoption proceeding. In making its determination, the family court judge
33 shall consider, among other factors: the relative familiarity of each
34 court with the facts and circumstances regarding permanency planning
35 for, and the needs and best interests of, the child; the ability of the
36 law guardian to continue to represent the child in the adoption proceed-
37 ing, if appropriate; the convenience of each court to the residence of
38 the prospective adoptive parent or parents; and the relative ability of
39 each court to hear and determine the adoption petition expeditiously.
40 The court in which the adoption petition was filed shall issue an order
41 incorporating this determination of jurisdiction within thirty days of
42 the filing of the adoption petition.

43 (D) If the family court that exercised jurisdiction over the most
44 recent permanency or other proceeding determines that it should exercise
45 jurisdiction over the adoption petition, the order of the court in which
46 the adoption petition was filed shall direct the transfer of the
47 proceeding forthwith but in no event more than thirty-five days after
48 the filing of the petition. The petition shall be assigned, wherever
49 practicable, to the family court judge who heard the most recent perman-
50 ency or other proceeding involving the child.

51 (E) If the family court that exercised jurisdiction over the permanen-
52 cy or other proceeding involving the child declines to exercise jurisdic-
53 tion over the adoption petition, the court in which the adoption
54 petition was filed shall issue an order incorporating that determination
55 and shall proceed forthwith.

1 (iii) Neither such authorized agency nor any officer or agent thereof
2 need appear before the judge or surrogate. The judge or surrogate in his
3 or her discretion may accept the report of an authorized agency verified
4 by one of its officers or agents as the report of investigation
5 hereinbefore required. In making orders of adoption the judge or surro-
6 gate when practicable must give custody only to persons of the same
7 religious faith as that of the adoptive child in accordance with article
8 six of the social services law.
9 § 8. This act shall take effect on the ninetieth day after it shall
10 have become a law and shall apply to adoption, extra-judicial surrender
11 approval and termination of parental rights petitions and applications
12 to execute judicial surrenders filed on or after such date.

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

BILL NUMBER: S7888

SPONSOR: MEIER

TITLE OF BILL: An act to amend the family court act, the social services law and the domestic relations law, in relation to ensuring "one family, one judge" in adoption, surrender and termination of parental rights proceedings

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.

Children caught in the limbo of foster care must be given permanent homes - preferably through return to their families, but otherwise through adoption or other alternative - as quickly as possible. This is critical to the healthy development of the children, a linchpin of New York's recently-enacted landmark permanency legislation (L.2005, c.3), and is a mandate for New York State's eligibility for significant federal foster care funding under the federal Adoption and Safe Families Act

Public Law 105-89. Recognizing that the court process should not itself present an impediment to the timely achievement of permanence for children, we are submitting this measure - drawn by our Advisory Committee - to streamline the process through implementation of the nationally-recognized "one family/one judge" model.

Continuity of the court and the judge have been identified as essential elements for the prompt achievement of permanency for children in foster care. Federally-issued guidelines for state statutes implementing the Adoption and Safe Families Act, as well as guidelines adopted by the National Council of Juvenile and Family Court Judges governing "Model Courts" nationally, including those in New York and Erie Counties, emphasize the importance of having the same judge preside from the outset of a child protective proceeding to the fulfillment of a permanent home for a child, whether it be return, adoption or alternate plan.^{1} Significantly, research has demonstrated that the filing of an adoption petition in the same county and before the same judge can

measurably reduce the average time between freeing a child for adoption and finalization of the adoption from over one year to under six months.^{2} This finding is particularly significant when viewed in the context of earlier research demonstrating significant delays between freeing and finalization, notwithstanding the fact that an overwhelming majority of the children adopted were already residing in their adoptive homes at the time they were freed.^{3}

Consistent with national recommendations and research, the Committee's proposal would reduce a significant source of delay in achieving permanency for children by reducing the fragmentation that occurs when adoption petitions are filed in a different court than the related child protective, termination of parental rights and/or surrender proceedings. The measure would provide a preference for filing an adoption proceeding in the same court and, to the extent practicable, before the same judge that heard the most recent proceeding involving a child who is currently the subject of a Family Court child protective, foster care, surrender or termination of parental rights proceeding. If such an adoption petition is filed in a different court, the Court in which the case is filed would be required to ascertain whether the child is under the jurisdiction of a Family Court and, if so, which Court. The Court in which the petition is filed would then be required to communicate promptly with the judge who presided over the most recent litigation and to defer to that judge's determination as to the exercise of jurisdiction over the case. Sensitive to cases in which the two courts are located far from each other, the measure has been modified from its 2004 version to provide guidance to the court in its determination. Factors to be considered would include, among others, the relative familiarity of each court with the facts and circumstances of the case, the convenience of each court to the residence of the adoptive parents, the ability of the law guardian to continue to represent the child and the relative ability of each court to determine the adoption proceeding expeditiously. Similar preferences would be provided to assure continuity in surrender and termination of parental rights proceedings.

In 2005 permanency legislation greatly increases the need for this measure, particularly an urgency for continuity in the judge who addresses issues regarding post-adoption contact agreement. See Domestic Relations Law §112-b. Surely the same judge who approves a surrender based upon such an agreement should be the same judge who determines whether the agreement should be incorporated into an order of adoption - and, ultimately, the same judge responsible for enforcing the agreement, should the need arise.

Further, enactment of this measure would significantly advance the efforts of the Unified Court System, through Chief Judge Judith S. Kaye's "Adoption Now" collaborative initiative in conjunction with the New York State Office of Children and Family Services and the New York City Administration for Children's Services, to ensure that the large number of children freed for adoption in New York State but not yet adopted - approximately 5,000 - can be adopted without delay.

This measure would have no significant fiscal impact upon the State. It would take effect 90 days after becoming law.

2003-04 LEGISLATIVE HISTORY:

Senate 5405 (Rath)

Judiciary

Assembly 8089 (Rules, request of M. of A. Weinstein, et al)

Passed

2005-06 LEGISLATIVE HISTORY:

OCA 2005-47

Assembly 8655 (Rules, request of M. of A. Weinstein, et al)

Passed

{1} Duquette and Hardin, Guidelines for Public Policy and State Legislation Governing Permanence for Children (U.S. Dept. Of H.H.S., Admin. for Children and Families, Children's Bureau, 1999), p. IV-4; Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse & Neglect Cases (National Council of Juvenile and Family Court Judges, Fall, 2000), pps. 5,64; Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases (National Counsel of Juvenile and Family Court Judges, 1995), p. 19.

{2} The research examined implementation in New York City of the statutory authorization contained in chapter 588 of the Laws of 1991, to file adoption petitions during the pendency of termination of parental rights proceedings. At the end of the research period, 91.6% of the children in the experimental group were adopted, as compared to only 39.3% of the children in the randomly-assigned control group for whom the chapter 588 authorization was not utilized. See Festinger and Pratt, "Speeding Adoptions: An Evaluation of the Effects of Judicial Continuity," 26 Social Work Research #4:217-224 (Dec., 2002).

{3} Children adopted in New York City during a four-year period averaged 23 months between termination of parental rights and finalization of the adoptions, even though 84.5% of the children were already residing in their adoptive homes at the time of freeing. See Festinger and Pratt, "Speeding Adoptions: An Evaluation of the Effects of Judicial Continuity," 26 Social Work Research #4:217-224 (Dec., 2002); Festinger, NYC Adoptions: 1995- 1998 (Unpub. Annual monographs, NYU Sch. of Social Work).