

# STATE OF NEW YORK

8435

## IN SENATE

June 20, 2006

Introduced by Sen. MEIER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the family court act, the social services law and the domestic relations law, in relation to permanency hearings and placements of children in foster care

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 262 of the  
2 family court act, as amended by section 3 of part A of chapter 3 of the  
3 laws of 2005, is amended to read as follows:

4 (iv) the parent, foster parent, or other person having physical or  
5 legal custody of the child in any proceeding under article ten or ten-A  
6 of this act or section three hundred fifty-eight-a, three hundred eight-  
7 y-four or three hundred eighty-four-b of the social services law, and a  
8 non-custodial parent or grandparent served with notice pursuant to para-  
9 graph (e) of subdivision two of section three hundred eighty-four-a of  
10 the social services law;

11 § 2. Subdivision (g) of section 633 of the family court act, as added  
12 by section 7 of part A of chapter 3 of the laws of 2005, is amended to  
13 read as follows:

14 (g) If an order of suspended judgment has been satisfied or has been  
15 extended, but the child nonetheless remains in foster care pursuant to a  
16 placement under article ten of this act or section three hundred fifty-  
17 eight-a of the social services law, a permanency hearing shall be  
18 completed as previously scheduled pursuant to section one thousand  
19 eighty-nine of this act [~~immediately following~~], but no later than  
20 [~~sixty days~~] six months after the [~~earlier~~] completion of the [~~court's~~  
21 ~~statement of its order on the record or issuance of its written order~~]  
22 last permanency hearing. If guardianship and custody of the child have  
23 been transferred to the authorized agency upon an order revoking the  
24 order of suspended judgment, a permanency hearing shall be completed  
25 pursuant to paragraph one of subdivision (a) of section one thousand  
26 eighty-nine of this act immediately following, but in no event later

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

LBD17285-05-6

1 than sixty days after, the earlier of the court's statement of its order  
2 on the record or issuance of its written order.

3 § 3. Paragraph (i) of subdivision (b) of section 1055 of the family  
4 court act, as amended by section 18 of part A of chapter 3 of the laws  
5 of 2005, is amended to read as follows:

6 (i) The court shall state on the record its findings supporting the  
7 placement in any order of placement made under this section. The order  
8 of placement shall include, but not be limited to:

9 (A) a description of the visitation plan;

10 (B) a direction that the respondent or respondents shall be notified  
11 of the planning conference or conferences to be held pursuant to subdi-  
12 vision three of section four hundred nine-e of the social services law,  
13 of their right to attend the conference, and of their right to have  
14 counsel or another representative or companion with them;

15 (C) a date certain for the permanency hearing, which may be the previ-  
16 ously-scheduled date certain, but in no event more than eight months  
17 from the date of removal of the child from his or her home. Provided,  
18 however, that if there is a sibling or half-sibling of the child who was  
19 previously removed from the home pursuant to this article, the date  
20 certain for the permanency hearing shall be the date certain previously  
21 scheduled for the sibling or half-sibling of the child who was the first  
22 child removed from the home, where such sibling or half-sibling has a  
23 permanency hearing date certain scheduled within the next eight months,  
24 but in no event later than eight months from the date of removal of the  
25 child from his or her home;

26 (D) a notice that if the child remains in foster care for fifteen of  
27 the most recent twenty-two months, the agency may be required by law to  
28 file a petition to terminate parental rights. A copy of the court's  
29 order and the service plan shall be given to the respondent; and

30 (E) where the permanency goal is return to the parent and it is antic-  
31 ipated that the child may be finally discharged to his or her parent  
32 before the next scheduled permanency hearing, the court may provide the  
33 local social services district with authority to finally discharge the  
34 child to the parent without further court hearing, provided that ten  
35 days prior written notice is served upon the court and law guardian. If  
36 the court on its own motion or the law guardian on motion to the court  
37 does not request the matter to be brought for review before final  
38 discharge, no further permanency hearings will be required. The local  
39 social services district may also discharge the child on a trial basis  
40 to the parent unless the court has prohibited such trial discharge or  
41 unless the court has conditioned such trial discharge on another event.  
42 For the purposes of this section, trial discharge shall mean that the  
43 child is physically returned to the parent while the child remains in  
44 the care and custody of the local social services district. Permanency  
45 hearings shall continue to be held for any child who has returned to his  
46 or her parents on a trial discharge. Where the permanency goal for a  
47 child aging out of foster care is another planned permanent living  
48 arrangement that includes a significant connection to an adult willing  
49 to be a permanency resource for the child, the local social services  
50 district may also discharge the child on a trial basis to the planned  
51 permanent living arrangements, unless the court has prohibited or other-  
52 wise conditioned such a trial discharge. Trial discharge for a child  
53 aging out of foster care shall mean that a child is physically  
54 discharged but the local social services district retains care and  
55 custody or custody and guardianship of the child and there remains a  
56 date certain for the scheduled permanency hearing. Children placed under

1 this section shall be placed until the court completes the initial  
2 permanency hearing scheduled pursuant to article ten-A of this act.  
3 Should the court determine pursuant to article ten-A of this act that  
4 placement shall be extended beyond completion of the scheduled permanen-  
5 cy hearing, such extended placement and any such successive extensions  
6 of placement shall expire at the completion of the next scheduled  
7 permanency hearing, unless the court shall determine, pursuant to arti-  
8 cle ten-A of this act, to continue to extend such placement.

9 § 4. Subdivisions (c), (d), (e), (f) and (g) of section 1055 of the  
10 family court act, are relettered subdivisions (e), (f), (g), (h) and (i)  
11 and two new subdivisions (c) and (d) are added to read as follows:

12 (c) In addition to or in lieu of an order of placement made pursuant  
13 to subdivision (b) of this section, the court may make an order direct-  
14 ing a child protective agency, social services official or other duly  
15 authorized agency to undertake diligent efforts to encourage and  
16 strengthen the parental relationship when it finds such efforts will not  
17 be detrimental to the best interests of the child. Such efforts shall  
18 include encouraging and facilitating visitation with the child by the  
19 parent or other person legally responsible for the child's care. Such  
20 order may include a specific plan of action for such agency or official  
21 including, but not limited to, requirements that such agency or official  
22 assist the parent or other person responsible for the child's care in  
23 obtaining adequate housing, employment, counseling, medical care or  
24 psychiatric treatment. Such order shall also include encouraging and  
25 facilitating visitation with the child by the non-custodial parent and  
26 grandparents who have obtained orders pursuant to part eight of this  
27 article, and may include encouraging and facilitating visitation with  
28 the child by the child's siblings. Nothing in this subdivision shall be  
29 deemed to limit the authority of the court to make an order pursuant to  
30 section two hundred fifty-five of this act.

31 (d) In addition to or in lieu of an order of placement made pursuant  
32 to subdivision (b) of this section, the court may make an order direct-  
33 ing a social services official or other duly authorized agency to insti-  
34 tute a proceeding to legally free the child for adoption, if the court  
35 finds reasonable cause to believe that grounds therefor exist. Upon a  
36 failure by such official or agency to institute such a proceeding within  
37 ninety days after entry of such order, the court shall permit the foster  
38 parent or parents in whose home the child resides to institute such a  
39 proceeding unless the social services official or other duly authorized  
40 agency caring for the child, for good cause shown and upon due notice to  
41 all parties to the proceeding, has obtained a modification or extension  
42 of such order, or unless the court has reasonable cause to believe that  
43 such foster parent or parents would not obtain approval of their peti-  
44 tion to adopt the children in a subsequent adoption proceeding.

45 § 5. Section 1071 of the family court act, as added by chapter 962 of  
46 the laws of 1970, is amended to read as follows:

47 § 1071. Failure to comply with terms and conditions of suspended judg-  
48 ment. If, prior to the expiration of the period of the suspended judg-  
49 ment, a motion or order to show cause is filed that alleges that a  
50 parent or other person legally responsible for a child's care [~~is~~  
51 ~~brought before the court for failing to comply with~~] violated the terms  
52 and conditions of a suspended judgment issued under section one thousand  
53 fifty-three [~~and if~~] of this article, the period of the suspended judg-  
54 ment shall be tolled pending disposition of the motion or order to show  
55 cause. If, after hearing, the court is satisfied by competent proof that  
56 the parent or other person [~~did so~~] violated the order of suspended

1 judgment, the court may revoke the suspension of judgment and enter any  
2 order that might have been made at the time judgment was suspended.

3 § 6. The opening paragraph of section 1072 of the family court act, as  
4 amended by chapter 1039 of the laws of 1973, is amended to read as  
5 follows:

6 If, prior to the expiration of the period of an order of supervision  
7 pursuant to section one thousand fifty-four or one thousand fifty-seven  
8 of this article, a motion or order to show cause is filed that alleges  
9 that a parent or other person legally responsible for a child's care [~~is~~  
10 ~~brought before the court for failing to comply with~~] violated the terms  
11 and conditions of an order of supervision issued under section one thou-  
12 sand fifty-four or [~~of an order of protection issued under section one~~  
13 ~~thousand fifty-six or section one thousand twenty-seven and if,~~] one  
14 thousand fifty-seven of this article, the period of the order of super-  
15 vision shall be tolled pending disposition of the motion or order to  
16 show cause. If, after hearing, the court is satisfied by competent proof  
17 that the parent or other person [~~did so~~] violated the order of super-  
18 vision willfully and without just cause, the court may:

19 § 7. Paragraphs 2 and 3 of subdivision (a) of section 1089 of the  
20 family court act, as added by section 27 of part A of chapter 3 of the  
21 laws of 2005, are amended to read as follows:

22 (2) All other permanency hearings. At the conclusion of the hearing  
23 pursuant to section one thousand twenty-two [~~or~~], one thousand twenty-  
24 seven, or one thousand fifty-two of this act at which the child was  
25 remanded or placed and upon the court's approval of a voluntary place-  
26 ment instrument pursuant to section three hundred fifty-eight-a of the  
27 social services law, the court shall set a date certain for an initial  
28 permanency hearing [~~and~~], advise all parties in court of the date set  
29 and include the date in the order. Orders issued in subsequent court  
30 hearings prior to the permanency hearing, including, but not limited to,  
31 the order of placement issued pursuant to section one thousand fifty-  
32 five of this act, shall include the date certain for the permanency  
33 hearing. The initial permanency hearing shall be commenced no later than  
34 six months from the date which is sixty days after the child was removed  
35 from his or her home [~~and~~]; provided, however, that if a sibling or  
36 half-sibling of the child has previously been removed from the home and  
37 has a permanency hearing date certain scheduled within the next eight  
38 months, the permanency hearing for each child subsequently removed from  
39 the home shall be scheduled on the same date certain that has been set  
40 for the first child removed from the home, unless such sibling or half-  
41 sibling has been removed from the home pursuant to article three or  
42 seven of this act. The permanency hearing shall be completed within  
43 thirty days of [~~commencement~~] the scheduled date certain.

44 (3) Subsequent permanency hearings for a child who [~~remains in foster~~  
45 ~~care~~] continues in out-of-home placement or who is freed for adoption  
46 shall be [~~commenced~~] scheduled for a date certain which shall be no  
47 later than six months from the completion of the previous permanency  
48 hearing and such subsequent permanency hearings shall be completed with-  
49 in thirty days of [~~commencement~~] the date certain set for such hearings.

50 § 8. Subparagraph (i) of paragraph 1 of subdivision (b) of section  
51 1089 of the family court act, as added by section 27 of part A of chap-  
52 ter 3 of the laws of 2005, is amended to read as follows:

53 (i) the child's parent, including any non-respondent parent, unless  
54 the parental rights of the parent have been terminated or surrendered  
55 and any other person legally responsible for the child's care at the  
56 most recent address or addresses known to the local social services

1 district or agency, and the foster parent in whose home the child  
2 currently resides, each of whom shall be a party to the proceeding; and

3 § 9. Paragraph 2 of subdivision (b) of section 1089 of the family  
4 court act, as added by section 27 of part A of chapter 3 of the laws of  
5 2005, is amended to read as follows:

6 (2) The notice and the permanency hearing report shall also be  
7 provided to any pre-adoptive parent or relative providing care for the  
8 child and shall be submitted to the court. The notice of the permanency  
9 hearing only shall be provided to a former foster parent in whose home  
10 the child previously had resided for a continuous period of twelve  
11 months in foster care, if any~~[- Provided, however, that]~~, unless the  
12 court, on motion of any party or on its own motion, dispenses with such  
13 notice on the basis that such notice would not be in the child's best  
14 interests. However, such pre-adoptive parent, relative, or former foster  
15 parent, on the basis of such notice, shall have an opportunity to be  
16 heard but shall not be a party to the permanency hearing. The failure of  
17 such pre-adoptive parent, relative or former foster parent to appear at  
18 a permanency hearing shall constitute a waiver of the opportunity to be  
19 heard. Such failure to appear shall not cause a delay of the permanency  
20 hearing nor be a ground for the invalidation of any order issued by the  
21 court pursuant to this section.

22 § 10. Clause (C) of subparagraph (viii) of paragraph 2 of subdivision  
23 (d) of section 1089 of the family court act, as added by section 27 of  
24 part A of chapter 3 of the laws of 2005, is amended to read as follows:

25 (C) Where the permanency goal is return to parent and it is antic-  
26 ipated that the child may be returned home before the next scheduled  
27 permanency hearing, the court may provide the local social services  
28 district with authority to finally discharge the child to the parent  
29 without further court hearing, provided that ten days prior written  
30 notice is served upon the court and law guardian. If the court on its  
31 own motion or the law guardian on motion to the court does not request  
32 the matter to be brought for review before final discharge, no further  
33 permanency hearings will be required. The local social services district  
34 may also discharge the child on a trial basis to the parent unless the  
35 court has prohibited such trial discharge or unless the court has condi-  
36 tioned such trial discharge on another event. For the purposes of this  
37 section, trial discharge shall mean that the child is physically  
38 returned to the parent while the child remains in the care and custody  
39 of the local social services district. Permanency hearings shall contin-  
40 ue to be held for any child who has returned to his or her parents on a  
41 trial discharge. Where the permanency goal for a child aging out of  
42 foster care is another planned permanent living arrangement that  
43 includes a significant connection to an adult willing to be a permanency  
44 resource for the child, the local social services district may also  
45 discharge the child on a trial basis to the planned permanent living  
46 arrangements, unless the court has prohibited or otherwise conditioned  
47 such a trial discharge. Trial discharge for a child aging out of foster  
48 care shall mean that a child is physically discharged but the local  
49 social services district retains care and custody or custody and guardi-  
50 anship of the child and there remains a date certain for the scheduled  
51 permanency hearing.

52 § 11. Subdivision b of section 1112 of the family court act, as added  
53 by chapter 232 of the laws of 1983, is amended to read as follows:

54 b. In any proceeding pursuant to article ten of this act or in any  
55 proceeding pursuant to article ten-A of this act that originated as a  
56 proceeding under article ten of this act where the family court issues

1 an order which will result in the return of a child previously remanded  
2 or placed by the family court in the custody of someone other than the  
3 respondent, such order shall be stayed until five p.m. of the next busi-  
4 ness day after the day on which such order is issued unless such stay is  
5 waived by all parties to the proceeding by written stipulation or upon  
6 the record in family court. Nothing herein shall be deemed to affect the  
7 discretion of a judge of the family court to stay an order returning a  
8 child to the custody of a respondent for a longer period of time than  
9 set forth in this subdivision.

10 § 12. Section 1118 of the family court act, as amended by section 30  
11 of part A of chapter 3 of the laws of 2005, is amended to read as  
12 follows:

13 § 1118. Applicability of civil practice law and rules. The provisions  
14 of the civil practice law and rules apply where appropriate to appeals  
15 under this article, provided, however, that the fees required by section  
16 eight thousand twenty-two of the civil practice law and rules shall not  
17 be required where the attorney for the appellant or attorney for the  
18 movant, as applicable, certifies that such appellant or movant has been  
19 assigned counsel or a law guardian pursuant to section two hundred  
20 forty-nine, two hundred sixty-two or eleven hundred twenty of this act  
21 or section seven hundred twenty-two of the county law, or is represented  
22 by a legal aid society or a legal services program or other nonprofit  
23 organization, which has as its primary purpose the furnishing of legal  
24 services to indigent persons, or by private counsel working on behalf of  
25 or under the auspices of such society or organization. Where the attor-  
26 ney for the appellant or the attorney for the movant certifies in  
27 accordance with procedures established by the appropriate appellate  
28 division that the appellant or movant has been represented in family  
29 court by assigned counsel or a law guardian, pursuant to section two  
30 hundred forty-nine, two hundred sixty-two or eleven hundred twenty of  
31 this act or section seven hundred twenty-two of the county law, or is  
32 represented by a legal aid society or legal services program or some  
33 other nonprofit organization, which has as its primary purpose the  
34 furnishing of legal services to indigent persons, or by private counsel  
35 working on behalf or under the auspices of such society or organization,  
36 and that the appellant, who has indicated an intention to appeal, or  
37 movant, continues to be [~~indigent and to be~~] eligible for assignment of  
38 counsel and, in the case of counsel assigned to represent an adult  
39 party, continues to be indigent, the appellant or movant shall be  
40 presumed eligible for poor person relief pursuant to section eleven  
41 hundred one of the civil practice law and rules and for assignment of  
42 counsel on appeal without further motion. The appointment of counsel and  
43 granting of poor person relief by the appellate division shall continue  
44 for the purpose of filing a notice of appeal or motion for leave to  
45 appeal to the court of appeals.

46 § 13. Subdivisions 3 and 5 of section 1121 of the family court act, as  
47 amended by section 32 of part A of chapter 3 of the laws of 2005, are  
48 amended to read as follows:

49 3. It shall also be the duty of such counsel or law guardian to ascer-  
50 tain whether the party represented by such attorney wishes to appeal  
51 and, if so, to serve and file the necessary notice of appeal and, as  
52 applicable, to apply for leave to appeal as a poor person, to file a  
53 certification of continued [~~indigency and continued~~] eligibility for  
54 appointment of counsel pursuant to section eleven hundred eighteen of  
55 this article, and to submit such other documents as may be required by  
56 the appropriate appellate division.

1 5. Where a party wishes to appeal, it shall also be the duty of such  
2 counsel or law guardian, where appropriate, to apply for assignment of  
3 counsel for such party pursuant to applicable provisions of this act,  
4 the judiciary law and the civil practice law and rules, and to file a  
5 certification of continued [~~indigency and continued~~] eligibility for  
6 appointment of counsel and, in the case of counsel assigned to represent  
7 an adult party, continued indigency, pursuant to section eleven hundred  
8 eighteen of this article and to submit such other documents as may be  
9 required by the appropriate appellate division.

10 § 14. Paragraph (b) of subdivision 2-a of section 358-a of the social  
11 services law, as amended by section 35 of part A of chapter 3 of the  
12 laws of 2005, is amended to read as follows:

13 (b) [~~A foster parent or parents in whose home the child resides may~~  
14 ~~make a motion to the~~] The court [to], upon approving an instrument under  
15 this section, shall schedule a permanency hearing pursuant to article  
16 ten-A of the family court act[~~, upon a showing of reasonable cause to~~  
17 ~~believe that grounds exist to institute a proceeding pursuant to para-~~  
18 ~~graph (b) of subdivision four of section three hundred eighty-four b of~~  
19 ~~this chapter to legally free such child for adoption] for a date certain  
20 not more than eight months after the placement of the child into foster  
21 care. Such date certain shall be included in the order approving the  
22 instrument.~~

23 § 15. Subdivision 12 of section 358-a of the social services law, as  
24 amended by section 5 of part B of chapter 3 of the laws of 2005, is  
25 amended to read as follows:

26 (12) For the purposes of this section, aggravated circumstances means  
27 where a child has been either severely or repeatedly abused, as defined  
28 in subdivision eight of section three hundred eighty-four-b of this  
29 chapter; or where a child has subsequently been found to be an abused  
30 child, as defined in paragraph (i) or (iii) of subdivision (e) of [~~this~~]  
31 section one thousand twelve of the family court act, within five years  
32 after return home following placement in foster care as a result of  
33 being found to be a neglected child, as defined in subdivision (f) of  
34 [~~this~~] section one thousand twelve of the family court act, provided  
35 that the respondent or respondents in each of the foregoing proceedings  
36 was the same; or where the court finds by clear and convincing evidence  
37 that the parent of a child in foster care has refused and has failed  
38 completely, over a period of at least six months from the date of  
39 removal, to engage in services necessary to eliminate the risk of abuse  
40 or neglect if returned to the parent, and has failed to secure services  
41 on his or her own or otherwise adequately prepare for the return home  
42 and, after being informed by the court that such an admission could  
43 eliminate the requirement that the local department of social services  
44 provide reunification services to the parent, the parent has stated in  
45 court under oath that he or she intends to continue to refuse such  
46 necessary services and is unwilling to secure such services independent-  
47 ly or otherwise prepare for the child's return home; provided, however,  
48 that if the court finds that adequate justification exists for the fail-  
49 ure to engage in or secure such services, including but not limited to a  
50 lack of child care, a lack of transportation, and an inability to attend  
51 services that conflict with the parent's work schedule, such failure  
52 shall not constitute an aggravated circumstance; or where a court has  
53 determined a child five days old or younger was abandoned by a parent  
54 with an intent to wholly abandon such child and with the intent that the  
55 child be safe from physical injury and cared for in an appropriate  
56 manner.

1 § 16. The opening paragraph of subdivision 2 and subdivision 3 of  
2 section 409-e of the social services law, as amended by section 60 of  
3 part A of chapter 3 of the laws of 2005, are amended and a new subdivi-  
4 sion 6 is added to read as follows:

5 Upon completion of any assessment provided for in subdivision one of  
6 this section, and not later than thirty days after placement of a child  
7 in foster care pursuant to article three or seven of the family court  
8 act or not later than thirty days after a child is removed from his or  
9 her home, the local social services district shall establish or update  
10 and maintain a family service plan based on the assessment required by  
11 subdivision one of this section. The plan shall be prepared in consulta-  
12 tion with the child's parent or guardian, unless such person is unavail-  
13 able or unwilling to participate, or such participation would be harmful  
14 to the child, and with the child if the child [~~is in foster care and~~] is  
15 ten years of age or older, and, where appropriate, with the child's  
16 siblings. Such consultation shall be done in person, unless such a meet-  
17 ing is impracticable or would be harmful to the child. The plan shall  
18 include at least the following:

19 3. The plan shall be reviewed and revised, in accordance with the  
20 procedures and standards in subdivision two of this section, at least  
21 within the first ninety days following the date the child was first  
22 considered for placement in foster care, and, if the child has been  
23 placed in foster care pursuant to article three or seven of the family  
24 court act or removed from his or her home, within the first ninety days  
25 following the date of placement or removal. The plan shall be further  
26 reviewed and revised not later than one hundred twenty days from this  
27 initial review and at least every six months thereafter; provided,  
28 however, that if a sibling or half-sibling of the child has previously  
29 been considered for placement or removed from the home, the plan shall  
30 be further reviewed and revised on the schedule established for the  
31 family based on the earliest of those events. Such revisions shall  
32 indicate the types, dates and sources of services that have actually  
33 been provided and an evaluation of the efficacy of such services, and  
34 any necessary or desirable revisions in goals or planned services. The  
35 review and revision of the plan shall be prepared in consultation with  
36 the child's parent or guardian, unless such person is unavailable or  
37 unwilling to participate, or such participation would be harmful to the  
38 child, and with the child if the child [~~is in foster care and~~] is ten  
39 years of age or older, and, where appropriate, with the child's  
40 siblings. Such consultation shall be done in person, unless such a meet-  
41 ing is impracticable or would be harmful to the child.

42 6. Nothing in this section shall require a social services district to  
43 complete an assessment or service plan for a child who is in the custody  
44 of the office of children and family services, unless the child is also  
45 in the care and custody or custody and guardianship of the commissioner  
46 of the social services district.

47 § 17. Subdivision 2 of section 112-b of the domestic relations law, as  
48 added by section 63 of part A of chapter 3 of the laws of 2005, is  
49 amended to read as follows:

50 2. Agreements regarding communication [~~with~~] or contact between an  
51 adoptive child, adoptive parent or parents, and a birth parent or  
52 parents and/or biological siblings or half-siblings of an adoptive child  
53 shall not be legally enforceable unless the terms of the agreement are  
54 incorporated into a written court order entered in accordance with the  
55 provisions of this section. The court shall not incorporate an agreement  
56 regarding communication or contact into an order unless the terms and

1 conditions of the agreement have been set forth in writing and consented  
 2 to in writing by the parties to the agreement, including the law guardi-  
 3 an representing the adoptive child. The court shall not enter a proposed  
 4 order unless [~~it has found~~] the court that approved the surrender of the  
 5 child determined and stated in its order that the communication with or  
 6 contact between the adoptive child, the prospective adoptive parent or  
 7 parents and a birth parent or parents and/or biological siblings or  
 8 half-siblings, as agreed upon and as set forth in the agreement, would  
 9 be in the adoptive child's best interests. Notwithstanding any other  
 10 provision of law, a copy of [~~any~~] the order entered pursuant to this  
 11 section incorporating the post-adoption contact agreement shall be given  
 12 to all parties who have agreed to the terms and conditions of such  
 13 order.  
 14 § 18. This act shall take effect immediately.

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

**BILL NUMBER:** S8435

**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 permanency hearings and placements of children in foster care

**PURPOSE:**

This bill makes technical amendments to the comprehensive permanency law reform signed into law as chapter 3 of the laws of 2005.

**SUMMARY OF PROVISIONS:**

Section 1 of the proposal amends subdivision (a) of section 262 of the FCA pertaining to assigned counsel to clarify that a parent, foster parent or other person having physical or legal custody of a child has a right to appointed counsel, if indigent, in FCA Article 10 child protective proceedings and FCA Article 10-A permanency hearings.

Section 2 of the proposal amends subdivision (g) of section 633 of the FCA pertaining to suspended judgments to provide that where a suspended judgment in a permanent neglect case has been satisfied or extended, but the child remains in foster care, the next permanency hearing must be completed as previously scheduled, no later than six months after the completion of the last permanency hearing.

Section 3 of the proposal amends subdivision (b) of section 1055 of the FCA pertaining to placements to restore provisions requiring an order of placement to include: a description of the visitation plan; a requirement for notification of the respondent parent or parents of planning conferences and the parents' rights to attend such conferences; the date certain for the next permanency hearing; and notice that a petition to

terminate parental rights may be filed if the child remains in foster care for 15 of the most recent 22 months. This section also establishes procedures for discharge of a child back to his or her parents prior to the next scheduled permanency hearing date, and for trial discharge to the parent or, in appropriate cases, to another planned permanent living arrangement that includes a significant connection to an adult.

Section 4 of the proposal reletters subdivisions (c), (d), (e), (f) and (g) of section 1055 of the FCA as subdivisions (e), (f), (g), (h) and (i) and adds new subdivisions (c) and (d) to restore provisions permitting the court to direct the child protective agency, social services official or other duly authorized agency to undertake diligent efforts to encourage and strengthen the parental relationship or direct the social services official or authorized agency to institute a proceeding to terminate parental rights and free the child for adoption.

Sections 5 and 6 amend sections 1071 and 1072 of the FCA pertaining to failure to comply with terms and conditions of suspended judgment and terms and conditions of supervision in an article 10 proceeding, to delineate procedures for violations of such orders.

Section 7 of the proposal amends subdivision (a) of section 1089 of the FCA pertaining to scheduling commencement and completion of permanency hearings. The proposal clarifies that this provision applies to children removed from home due to a voluntary placement agreement. This section also requires the coordination of permanency hearings for a child who is subsequently removed from home with the permanency hearing schedule for a sibling or half-sibling who previously has been removed, except where the subsequently removed sibling or half-sibling is removed pursuant to Articles 3 of 7 of the FCA. This section also requires subsequent permanency hearings to be scheduled for a date certain no later than six months from completion of the previous permanency hearing and shall be completed within thirty days of the date certain set for such hearing.

Sections 8 and 9 of the proposal amend paragraphs 1 and 2 of subdivision (b) of section 1089 of the FCA pertaining to notification of the permanency hearing, to dispense with providing such notification to the birth parent where the parental rights of the birth parent have been terminated or surrendered, and to permit the court to dispense with providing such notification to a former foster parent where it is determined not to be in the best interests of the child.

Section 10 of the proposal amends paragraph 2 of subdivision (d) of section 1089 of the FCA to establish procedures for the discharge of a child back to his or her parents prior to the next scheduled permanency hearing date, and for trial discharge to the parent or, in appropriate cases, to another planned permanent living arrangement that includes a significant connection to an adult.

Section 11 of the proposal amends section 1112 of the FCA pertaining to an automatic stay of appeal to include proceedings pursuant to Article 10-A of the FCA that originated as Article 10 proceedings.

Sections 12 and 13 of the proposal amend sections 1118 and 1121 of the FCA pertaining to appeals to clarify that only attorneys representing adult parties must file a certification attesting to the continued indigency of their client for purposes of assignment of counsel.

Sections 14 and 15 amend section 358-a of the Social Services Law (SSL) pertaining to voluntary placement instruments, to clarify that a permanency hearing date certain must be set not more than eight months after placement into foster care upon court approval of a voluntary placement instrument and to correct a statutory reference.

Section 16 of the proposal amends subdivisions two and three and adds a new subdivision six to section 409-e of the SSL pertaining to the preparation of a family service plan. The amendments to subdivisions two and three clarify that the provisions apply to children placed in foster care under Article 3 or Article 7 of the FCA not later than 30 days after placement in foster care, or not more than 30 days after the child has been removed from the home. This section also requires coordination of the schedule for periodic review of the family service plan of a child who is subsequently removed from home with the family services planning schedule for a sibling or half-sibling who previously has been considered for placement or removed from home, to facilitate planning for the entire family. New subdivision six of section 409-e of the SSL clarifies that a social services district is not required to complete an assessment and family service plan for a child who is in the custody of the office of Children and Family Services (OCFS) unless such child is also in the care and custody or custody and guardianship of the local Commissioner.

Section 17 of the proposal amends subdivision 2 of section 112-b of the Domestic Relations Law (DRL) pertaining to post-adoption contact agreements to clarify that the judge approving an adoption would not be permitted to incorporate a post-adoption contact agreement into the adoption order unless the judge who approved the surrender had determined and stated that such post-adoption contact agreement was in the best interests of the child.

Section 18 of the proposal provides for an immediate effective date.

**EXISTING LAW:**

Section 358-a of the SSL governs the procedures for the voluntary placement of a child by a parent into the custody and guardianship of a social services official. Section 409-e of the SSL governs the elements, development and periodic review of a family service plan for children identified by a social services district as being considered for placement in foster care or removed from home. Section 1055 of the FCA governs the procedures and requirements for the placement of an abused or neglected child into foster care. Section 1071 of the FCA governs the actions of the court upon a failure to comply with the terms and conditions of an order of suspended judgment. Section 1072 of the FCA governs the actions of the court upon a failure to comply with the terms and conditions of an order of supervision. Section 1089 of the FCA governs scheduling, commencement and completion of permanency hearings, notice of such hearings, the contents of the permanency hearing report, the court findings and the court order resulting from the permanency hearing. Section 1112 of the FCA governs those orders which may be appealed and provides for an automatic stay of certain orders issued under Article 10 of the FCA. Section 1118 of the FCA governs the applicability of the Civil Practice Law and Rules to appeals under Article 11 of the FCA. Section 1121 of the FCA governs the appellate procedures for certain family court matters.

**JUSTIFICATION:**

The permanency law, enacted as chapter 3 of the laws of 2005, reformed the manner in which children placed in foster care receive court reviews of their progress and plans for permanency. It created an ongoing family court process that keeps foster care cases on the court's calendar, ensures continuity of counsel, and provides all the parties to the litigation with important and substantive information about the well-being of the child in care. This bill is necessary to correct some inaccuracies in the original law and to avoid some unintended consequences of the permanency reform.

**LEGISLATIVE HISTORY:** New bill.

**FISCAL IMPLICATIONS:**

None.

**LOCAL FISCAL IMPLICATIONS:**

None

**EFFECTIVE DATE:**

Immediately.

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