

2005 Permanency Bill Part I

August 2nd, 2005

Continuous Calendaring

- Requires a court to calendar a Date Certain for each Permanency Hearing for a child placed under FCA Article 10, and regarding a child voluntarily placed or surrendered until all orders expire or all appeals are decided
- FCA §1088

Continuing Jurisdiction

- All actions under FCA Article 10 and regarding a child voluntarily placed or surrendered, which previously required that a new proceeding be initiated with a petition and jurisdiction obtained over the parties at each step of the process, may now be commenced by motion
- FCA §§1062-1066, SSL §358-a, 384-a

Legal Authority

- Provides that a child is placed until completion of the next scheduled permanency hearing, scheduled pursuant to FCA Article 10-A
- FCA §§1055(b)(i), 1089(d)(2)(ii), SSL §384-a(2)(h)(iii)

Continuing Representation

- Provides eligible parents with an appointed attorney to represent them while their child remains in foster care (the same attorney, until replaced upon application to the court), until all appeals are finally determined or all orders expire
- FCA §§262, 1090

Continuing Representation

- Provides a child with a law guardian while he or she remains in foster care (the same law guardian, until replaced upon application to the court), until all appeals are finally determined or until all orders expire
- FCA §§249, 1090

Article 3 and Article 7 Proceedings

- Continuing jurisdiction, calendaring and Permanency Hearing provisions do NOT apply to Article 3 (JD) or Article 7 (PINS) proceedings
- EXCEPTION: Where a PINS or JD child is also freed for adoption, the Permanency Hearing provisions apply
- FCA §1088, SSL §358-a

Mandated Reporter Records

- Requires mandated reporters to provide records regarding a mandated report necessary for a CPS investigation, irrespective of HIPAA proscriptions or any other privilege
- SSL §415

Confidential Substance Abuse Records Pre-petition Application Under Federal Law

- Provides for the confidentiality of substance abuse records and limited methods of disclosure of substance abuse records
- 42 USC §290dd-2 and 42 CFR §2.64

Entry Into Foster Care

- Requires a hearing whenever a child is removed (Pre-removal or Post-removal)
- Changes the timeframes for filing of a petition and the hearing when a child is removed from his or her home

FCA §1021 Removal With Consent Notice Requirements

- Right to request FCA §1028 hearing
- Right to counsel and procedures
- Name, title, organization, address & phone number of authorized agency
- Phone number for visitation
- Phone number of CPS to contact for date and time of petition filing and FCA §1027 hearing

FCA §1021 Removal With Consent

- **Petition:** Must be filed within 3 court days from the date of removal unless the child is returned
- **Hearing:** Must be held no later than the next court day after petition is filed

FCA §1022
Pre-petition Removal With Court Order

- **Petition:** Must be filed within 3 court days from the date of removal unless good cause shown

FCA §1022 cont'd.

- **Hearing:** Must be held no later than the next court day after petition is filed
If in §1022 hearing
 - 1) Parent is not present

or

 - 2) Parent is present, unrepresented **and** does not waive right to counsel

FCA §1026
Emergency Removal Under FCA §1024

- **Petition:** Must be filed no later than the next court day after removal unless good cause shown
- **Hearing:** Must be held no later than the next court day after petition is filed

FCA §1027
Hearing and Preliminary Orders
After Filing Petition

- **Hearing:** Must be held no later than the next court day after petition is filed if the child was removed under FCA §1021, FCA §1022 (if the parent was not there or was un-represented and did not waive) or FCA §1024

Where a Child Has Been Removed,
Court Must Determine:

- 1) Whether the child's interests require protection, including whether the child should be returned to the parent or other person legally responsible
- IF CHILD IS NOT RETURNED:
- 2) Whether continuation in the home is in the child's best interests; and
 - 3) Whether reasonable efforts were made to prevent or eliminate the need for removal

FCA §1035
Issuance of Summons, Notice

- In all cases where a child has been removed:
 - Summons and petition must be issued the same day the petition is filed

FCA §1035
Issuance of Summons, Notice

- In all cases where a child has not been removed:
 - Summons and petition must be issued forthwith, requiring appearance of parent or person legally responsible within 7 court days

Scheduling and Continuance of
FCA §§1022 and 1027 Hearings

- Requires a court to calendar a FCA §1022 or §1027 hearing IMMEDIATELY; and
- Continue the hearing on successive court days until a determination is made regarding the appropriateness of the removal, including determination of imminent risk, best interests and reasonable efforts
- FCA §1022(a)(ii), §1027(a)(i)

Removal = Immediate Investigation

- Requires immediate investigation for:
 - Any Non-respondent Parent(s); and
 - Any Relatives of a child
- FCA §1017

Notice of Article 10 Proceeding &
Investigation Non-Respondent
Parent Definition

- Parents with the right to intervene; and
- Non-custodial parents with the right to enforce visitation
- FCA §§1017(1), 1035(d), 1035(e)

Investigation Details – FCA §1017

- Information regarding any non-respondent parent(s) must be recorded in the UCR, to include, but not limited to:
 - Name
 - Last Known Address
 - Social Security Number; and
 - Employer's Address
 - AND
 - Any Other Identifying Information

Investigation Details-
Voluntary Placement or Surrender

- Parent executing the surrender must provide Information regarding:
 - The other parent
 - any person to whom the parent was married at the time of conception or birth of the child
 - and any other person who would be entitled to a notice of a proceeding to terminate parental rights under SSL §384-cThis information must be recorded in the UCR

Investigation Details-
Voluntary Placement or Surrender Cont'd.

- The information to include, but not limited to:
Name;
Last Known Address;
Social Security Number;
Employer's Address;
AND
Any Other Identifying Information
- SSL §§384-a, 383-c, 384

Article 6 Custody Placements

- Allows a court to make an Article 6 custody placement of a child removed from his or her home under FCA Article 10 with a relative or other suitable person without the need to commence a separate proceeding (file another petition)
- FCA §1017(2)(a)(i)

Article 10 Direct Placements

- Clarifies the authority for the court to order a direct placement of a child removed from his or her home under FCA Article 10 with a relative or other suitable person
- FCA §1017(2)(a)(ii)

Assessment, Case Planning and
Service Plan Reviews
For All Foster Care and Direct Placements

- Within 30 Days of Removal
- Requires a LDSS to assess a child and his or her family and develop a service plan; or
- Update an assessment and develop a service plan
- SSL §409-e

Example #1-Preventive Only
**Where the child is only in receipt of
preventive services and does not
enter foster care**

- A) Day 1 is the date the child is identified as being considered for placement into foster care (Mandated Preventive Services Case)
- B) Family assessment and service plan (FASP) is due within 30 days of Day 1

Example #1-Preventive Only Cont'd.

- C) Next FASP is due within 90 days of Day 1
- D) Subsequent FASP is due within 210 days of Day 1
- E) All FASPs thereafter are due every 6 months from the preceding FASP

Example #2 - Foster Care Only
Where a child entered foster care and was not in receipt of preventive services at the time of entry

- A) Day 1 is the date of removal of the child from his or her home
- B) FASP is due within 30 days of Day 1
- C) Next FASP and the initial Service Plan Review are due within 90 days of Day 1

Example #2 - Foster Care Only Cont'd.

- D) Subsequent FASP and Service Plan Review are due within 210 days of Day 1
- E) All FASPs and subsequent Service Plan Reviews thereafter are due every 6 months from the preceding FASP and Review

Example #3-Preventive Services/
Foster Care

- If a child was receiving preventive services prior to entry into foster care, the Example # 1/ Preventive Only timeframes apply while the child is receiving preventive services prior to entry into foster care

Example #3-Preventive Services/
Foster Care Cont'd.

- Once a child enters foster care, the timing of all assessments and service plans changes, irrespective of how long the child has been in receipt of preventive services

Example #3-Preventive Services/
Foster Care Cont'd.

- When the child enters foster care, the child is treated as if he or she had not been in receipt of preventive services and the Example #2/ Foster Care Only timeframes and sequences apply

Example #3-Preventive Services/
Foster Care Cont'd.

One Important Caveat:

- The FASP due at 30 days may be an update of the previous FASP

Please Note:

- For Day 1 in foster care cases, removal means physical removal from the child's home
- Removal includes where the child is removed and placed in the direct custody of a relative or other suitable person and thereafter enters foster care

Conferencing & Mediation

- Provides specific authority for conferencing and mediation in FCA Article 10 proceedings
- FCA §1018

Default Judgments

- Provides a one-year time limit for a parent to apply to reopen a default judgment in an Article 10 proceeding
- Requires the parent to allege a meritorious defense to the underlying Article 10 petition
- FCA §1042

New FCA Article 10-A

- Requires the first Permanency Hearing after child is removed from the home to be commenced on the Date Certain set by the court – within 8 months of removal from the home
- Requires the hearing to be completed within 30 days of the Date Certain
- FCA §§ 1086 - 1090

When a Non-Freed Child Is Removed From Home

- Requires a court to set a Date Certain for the first Permanency Hearing at the removal hearing or the hearing approving the voluntary placement agreement or surrender of a child, if the child remains in foster care
- Requires the Date Certain to be included in the written order issued by the court and served upon the parents
- FCA §1089

Date Certain

- The date and time the Permanency Hearing WILL BE HELD

Calculating the Date Certain Non-Freed Child

- Article 10 Removal or Voluntary Placement Initial Permanency Hearing:

Date child was physically removed from home

+ 60 days + 6 months

= DATE CERTAIN

- FCA § 1089(a)(2), 1089(a)(1)

Calculating the Date Certain Freed Child

- Completely Freed Child:

Immediately upon TPR disposition or approval of surrender **or**

Date of approval of surrender

+ 30 days

= DATE CERTAIN

New FCA Article10-A

- Requires subsequent Permanency Hearings at least every 6 months thereafter if the child remains in foster care, on a Date Certain set by the court upon completion of the previous Permanency Hearing
- Requires the hearing to be completed within 30 days of the Date Certain
- FCA §1089(a)(3)

New FCA Article10-A

- Requires permanency hearings for youth ages 18 to 21 who consent to continued foster care
- FCA §1087(a)

New FCA Article10-A

- Clarifies that permanency hearings must be held for children directly placed with relatives under Article 10
- FCA §1086

Permanency Hearing Report

- Filed with the court and mailed to the parties:

14 days before the date certain

AND

Must include the following
Accurate and up-to-date information

Notice of Permanency Hearing and Report

- Provided to:
 - Child's parent, including any non-respondent parent
 - Any other person legally responsible for the child; and
 - Foster parent in whose home the child currently resides

Notice of Permanency Hearing and Report

- Also provided to:
 - Agency supervising child's care
 - Law Guardian
 - Attorney for respondent parent
 - Pre-adoptive parent; and
 - Relative providing care for the child

Notice of Permanency Hearing ONLY

- Former foster parent within whose home the child resided for a continuous period of 12 months

Child's Current Permanency Goal

- Return to parent or parents
- Placement for adoption after the termination of parental rights
- Referral for legal guardianship
- Permanent placement with a fit and willing relative; or

Child's Current Permanency Goal Cont'd.

- Placement in another planned, permanent living arrangement that includes a significant connection to an adult willing to be a permanency resource for the child

Child's Health, Well-Being and Current Status

- A description of a child's health and well-being
- Information regarding a child's current placement

Child's Health, Well-Being
and Current Status Cont.'d.

- Education:
An update on the educational and other progress since a child's last Permanency Hearing including the steps taken by LDSS or other agency to:
 - Promptly enable or continue enrollment in an appropriate school or educational program when:

Education Cont.'d

- The child is subject to Ed Law Article 65 Compulsory Education (generally age 5 or 6 to completion of the school year in which a youth reaches age 16 or 17) or elects to participate in an program leading to a high school diploma

Education Cont.'d

- Promptly enable a child to be enrolled in an appropriate pre-kindergarten program, if available, when:

Child is eligible to be enrolled (generally age 4) [Ed Law §3602-e]

Education Cont.'d

- Make any necessary referrals of a child for:
 - Child under 3 yrs old and involved in indicated report of abuse or neglect; or
 - LDSS suspects a child, regardless of a child's age, may have a disability as defined in Public Health Law §2541 (5); or

Education Cont.'d

- Make any necessary referrals of a child for:
 - Child found eligible for early intervention or special education services before or during foster care placement

Education Cont.'d

- Necessary referrals may include:
 - Early intervention
 - Pre-school special education or services; or
 - Special education evaluations or services as appropriate; and

Education Cont.'d

- Necessary referrals may include:
 - Provide any available information regarding scheduled or provided evaluations or services

Education Cont.'d

- Assist the child to become gainfully employed or enrolled in a vocational program when:
 - Child is at least 16 yrs old; and
 - Child is not subject to compulsory education; and
 - Child elects not to participate in an educational program leading to a high school diploma

Child's Health, Well-Being and Current Status

- Visitation Plan Description:
 - Persons with whom the child visits, including siblings, if any; and
 - Frequency, duration, and quality of the visits
- Other Services

A description of any other services being provided to the child

Parent's Status

- Services offered to the parent to enable the child to be safely returned home
- Steps the parent has taken to use those services
- Barriers to the delivery of services
- Parent's progress toward reunification; and
- Any other steps taken by the parent to comply with and achieve the permanency plan

Reasonable Efforts Taken To Achieve Permanency Plan

- 1) Description of reasonable efforts taken by LDSS or other agency since the last hearing to achieve the permanency plan, including:
 - Reasonable efforts made to eliminate the need for placement of the child and enable the child to safely return home, including descriptions of any services provided

Reasonable Efforts Taken To Achieve Permanency Plan (cont.'d)

- Not Required if:
 - Child has been freed for adoption; or
 - Court has determined that such efforts are not required under FCA §1039-b

Reasonable Efforts Taken To Achieve Permanency Plan

- 2) Reasonable efforts made to finalize the placement of a child having a permanency plan of:
- Adoption
 - Guardianship
 - Placement with a fit and willing relative; or

Reasonable Efforts Taken To Achieve Permanency Plan Cont'd.

- Another planned permanent living arrangement other than return to the parent that includes a significant connection to an adult willing to be a permanency resource for the child

Reasonable Efforts Taken To Achieve Permanency Plan

- 3) Where it is unlikely the child will return home, the reasonable efforts made:
- To evaluate and plan for another permanent plan; and
 - Any steps taken to further a permanent plan other than return to the child's parent

Recommended Permanency Plan

- Child's Permanency Goal recommendation:
 - Whether the goal should be continued or changed
 - Reasons supporting the recommendation; and
 - Anticipated date for meeting that goal

Recommended Permanency Plan

- Placement recommendation:
 - Whether the child's placement should be extended; and
 - Reasons supporting the recommendation, including whether the child will be safe and whether it is in the child's best interests to be returned home

Recommended Permanency Plan

- Proposed changes in placement:
 - Any proposed changes in the child's current placement, including:
 - Trial discharge; or
 - Discharge that might occur before the next permanency hearing; and
 - Reasons supporting the recommendation

Recommended Permanency Plan

- Educational or Vocational services description:

Steps that will be taken by LDSS or other agency to enable the prompt delivery of such services to the child:

- In his or her current placement
- During any potential change in the child's placement

Recommended Permanency Plan

- Educational or Vocational services description:

Steps that will be taken by LDSS or other agency to enable the prompt delivery of such services to the child

- After discharge of the child in accordance with the plans for the child's placement until the next permanency hearing

Recommended Permanency Plan

- Visitation Plan recommendation:

- Any change to the visitation plan or plans; and
- Reasons supporting the recommendation

Recommended Permanency Plan

- For a child 14 yrs of age or older, or a child who will turn 14 before the next Permanency Hearing:

- A description of the services and assistance that will be provided to enable the child to learn independent living skills

Recommended Permanency Plan

- For a child placed outside New York State:
 - Whether the out-of-state placement continues to be appropriate, necessary and in the best interests of the child

Court Order

- Requires a court to make specific findings, based upon the best interests and safety of a child, including determining:
 - Whether reasonable efforts have been made to finalize the permanency plan
- Whether the placement should be terminated and the child returned home, and if not:
 - Whether the permanency goal should be approved or modified

Court Order

- Requires the court to set a Date Certain for the next Permanency Hearing at the conclusion of the permanency Hearing
- Requires the Date Certain to be stated in the order

Discharge Before the Next Date Certain

- Authority to discharge a child to his or her parent upon 10 days prior written notice to the court and the law guardian without further court hearing, where the permanency plan is return to parent
 - FCA §1089(d)(2)(viii)(C)

2005 Permanency Bill, Part II

- August 9th, 1:30pm – 3:30pm
- Topics to include the impacts on LDSS, Agency, and Court in these areas:
 - Freed Child Permanency Hearings
 - Conditional Surrenders
 - Termination of Parental Rights
 - Appeals

To E-mail Your Questions for 8/9 In Advance

- Send all questions to this account:
ocfs.sm.permanency.bill.implementation.questions@ocfs.state.ny.us

(Intranet and Internet)

OCFS Intranet:

- <http://ocfs.state.nyenet/ohrd/>

OCFS Internet:

- <http://www.ocfs.state.ny.us/ohrd/schedule.asp>

• Governor Pataki, Majority Leader Bruno, Speaker Silver Reach Agreement On Important Family Court Law Reform

Streamlines Proceedings for Children in Foster Care, Improves Permanent Placements

June 21, 2005 - Governor George E. Pataki, Senate Majority Leader Joseph L. Bruno and Assembly Speaker Sheldon Silver today announced agreement on legislation that will benefit families, the courts and, most importantly, children by moving them more quickly through the foster care system and into stable, permanent, loving households. This legislation, commonly known as the "permanency bill," enacts comprehensive reforms that will help families and will bring stability to thousands of New York's most vulnerable children.

» [Governor Pataki, Majority Leader Bruno, Speaker Silver Reach Agreement On Important Family Court Law Reform](#)

» [Permanency Bill - State Bill 5805](#)