

BILL TEXT:

STATE OF NEW YORK

5805

2005-2006 Regular Sessions

IN SENATE

June 17, 2005

Introduced by Sens. MEIER, BRUNO, DeFRANCISCO, FUSCHILLO, GOLDEN, LARKIN, LITTLE, PADAVAN, SALAND, VOLKER -- (at request of the Governor) -- 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, the education law, the domestic relations law, the civil practice law and rules and the mental hygiene law, in relation to judicial review and permanency hearings for children placed out of their homes; and to repeal certain provisions of the family court act and the social services law relating thereto (Part A); and to amend the family court act and the social services law, in relation to aggravated circumstances (Part B)

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

1 Section 1. This act enacts into law components of legislation deemed
2 necessary to improve permanency outcomes for abused and neglected chil-
3 dren in this state. Each component is wholly contained within a Part
4 identified as Parts A and B. The effective date for each particular
5 provision contained within such Part is set forth in the last section of
6 such Part. Any provision in any section contained within a Part, includ-
7 ing the effective date of the Part, which makes reference to a section
8 "of this act", when used in connection with that particular component,
9 shall be deemed to mean and refer to the corresponding section of the
10 Part in which it is found. Section two provides for severability of
11 these provisions and section three of this act sets forth the general
12 effective date of this act.

13 PART A

14 Section 1. Subdivisions (c) and (d) of section 115 of the family court
15 act, subdivision (c) as amended by chapter 409 of the laws of 2002 and

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

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1 subdivision (d) as added by chapter 462 of the laws of 1987, are amended
2 to read as follows:

3 (c) The family court has such other jurisdiction as is provided by
4 law, including but not limited to: proceedings concerning adoption and
5 custody of children, as set forth in parts two and three of article six
6 of this act; proceedings concerning the uniform interstate family
7 support act, as set forth in article five-B of this act; proceedings
8 concerning children in foster care and care and custody of children, as
9 set forth in sections three hundred fifty-eight-a[7] and three hundred
10 eighty-four-a [~~and three hundred ninety two~~] of the social services law
11 and article ten-A of this act; proceedings concerning guardianship and
12 custody of children by reason of the death of, or abandonment or surren-
13 der by, the parent or parents, as set forth in sections three hundred
14 eighty-three-c, three hundred eighty-four and paragraphs (a) and (b) of
15 subdivision four of section three hundred eighty-four-b of the social
16 services law; proceedings concerning standby guardianship and guardian-
17 ship of the person as set forth in part four of article six of this act
18 and article seventeen of the surrogate's court procedure act; and
19 proceedings concerning the interstate compact on juveniles as set forth
20 in chapter one hundred fifty-five of the laws of nineteen hundred
21 fifty-five, as amended, the interstate compact on the placement of chil-
22 dren, as set forth in section three hundred seventy-four-a of the social
23 services law, and the uniform child custody jurisdiction and enforcement
24 act, as set forth in article five-A of the domestic relations law.

25 (d) Notwithstanding subdivisions (a) through (c) of this section,
26 jurisdiction of the family court and tribal courts of Indian tribes
27 designated by the Secretary of the Interior over those child custody
28 proceedings provided for in articles three, seven [~~and~~], ten and ten-A
29 of this act and sections three hundred fifty-eight-a[7] and three
30 hundred eighty-four-b [~~and three hundred ninety two~~] of the social
31 services law involving Indian children as defined in subdivision thir-
32 ty-six of section two of the social services law shall be subject to the
33 terms and conditions set forth in applicable sections of title twenty-
34 five of the United States code; provided that tribal courts of Indian
35 tribes designated as such by the state of New York shall have jurisdic-
36 tion over such child custody proceedings involving Indian children to
37 the same extent as federally designated Indian tribes upon the approval
38 of the state [~~department of social services~~] office of children and
39 family services pursuant to section thirty-nine of the social services
40 law.

41 § 2. Subdivision (a) of section 249 of the family court act, as
42 amended by chapter 76 of the laws of 2002, is amended to read as
43 follows:

44 (a) In a proceeding under article three, seven [~~or~~], ten or ten-A of
45 this act or where a revocation of an adoption consent is opposed under
46 section one hundred fifteen-b of the domestic relations law or in any
47 proceeding under section three hundred fifty-eight-a, three hundred
48 eighty-three-c, three hundred eighty-four[7] or three hundred eighty-
49 four-b [~~or three hundred ninety two~~] of the social services law or when
50 a minor is sought to be placed in protective custody under section one
51 hundred fifty-eight of this act, the family court shall appoint a law
52 guardian to represent a minor who is the subject of the proceeding or
53 who is sought to be placed in protective custody, if independent legal
54 representation is not available to such minor. In any proceeding to
55 extend or continue the placement of a juvenile delinquent or person in
56 need of supervision pursuant to section seven hundred fifty-six or 353.3

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1 of this act or any proceeding to extend or continue a commitment to the
2 custody of the commissioner of mental health or the commissioner of
3 mental retardation and developmental disabilities pursuant to section
4 322.2 of this act, the court shall not permit the respondent to waive
5 the right to be represented by counsel chosen by the respondent,
6 respondent's parent, or other person legally responsible for the
7 respondent's care, or by a law guardian. In any other proceeding in
8 which the court has jurisdiction, the court may appoint a law guardian
9 to represent the child, when, in the opinion of the family court judge,
10 such representation will serve the purposes of this act, if independent
11 legal counsel is not available to the child. The family court on its
12 own motion may make such appointment.

13 § 3. The opening paragraph and paragraphs (i) and (iv) of subdivision
14 (a) of section 262 of the family court act, the opening paragraph as
15 added by chapter 682 of the laws of 1975 and paragraphs (i) and (iv) as
16 amended by chapter 457 of the laws of 1988, are amended to read as
17 follows:

18 Each of the persons described below in this subdivision has the right
19 to the assistance of counsel. When such person first appears in court,
20 the judge shall advise such person before proceeding that he or she has
21 the right to be represented by counsel of his or her own choosing, of
22 ~~his~~ the right to have an adjournment to confer with counsel, and of
23 ~~his~~ the right to have counsel assigned by the court in any case where
24 he or she is financially unable to obtain the same:

25 (i) the respondent in any proceeding under article ten or article
26 ten-A of this act and the petitioner in any proceeding under part eight
27 of article ten of this act;

28 (iv) the parent, foster parent, or other person having physical or
29 legal custody of the child in any proceeding under section three hundred
30 fifty-eight-a, three hundred eighty-four~~[7]~~ or three hundred eighty-
31 four-b~~[7, or three hundred ninety two]~~ of the social services law, and a
32 non-custodial parent or grandparent served with notice pursuant to para-
33 graph (e) of subdivision two of section three hundred eighty-four-a of
34 the social services law;

35 § 4. Paragraphs (d) and (e) of subdivision 1 of section 614 of the
36 family court act, as amended by chapter 666 of the laws of 1976, are
37 amended to read as follows:

38 (d) the parent or custodian, notwithstanding the agency's efforts, has
39 failed for a period of ~~more than~~ either at least one year or fifteen
40 out of the most recent twenty-two months following the date such child
41 came into the care of an authorized agency substantially and continuous-
42 ly or repeatedly to maintain contact with or plan for the future of the
43 child, although physically and financially able to do so; and

44 (e) the best interests of the child require that the guardianship and
45 custody of the child be committed to an authorized agency or to a foster
46 parent authorized to originate this proceeding under section ~~three~~
47 ~~hundred ninety two of the social services law or section one thousand~~
48 ~~fifty five]~~ one thousand eighty-nine of this act.

49 § 5. Section 623 of the family court act, as amended by chapter 663 of
50 the laws of 2002, is amended to read as follows:

51 § 623. Definition of "dispositional hearing". When used in this part,
52 "dispositional hearing" means a hearing to determine what order of
53 disposition should be made in accordance with the best interests of the
54 child. Where the disposition ordered is the commitment of guardianship
55 and custody in accordance with section six hundred thirty-four of this
56 ~~[article] part, [a permanency hearing shall be completed pursuant to~~

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~~1 section one thousand fifty five a of this act immediately following, but~~
~~2 in no event later than sixty days after, the earlier of the court's~~
~~3 statement of its order on the record or issuance of its written order. A~~
~~4 notice of the permanency hearing and a petition and/or report, as~~
~~5 directed by the court, shall be filed and provided to the parties, law~~
~~6 guardian and individuals required to be notified in the manner and~~
~~7 according to the schedule specified by the court in accordance with~~
~~8 section one thousand fifty five a of this act. Subsequent permanency~~
~~9 petitions shall be filed pursuant to section one thousand fifty five a~~
~~10 of this act no later than six months after completion of the last~~
~~11 permanency hearing, unless the court directs an earlier filing, and each~~
~~12 subsequent permanency hearing shall be completed within sixty days of~~
~~13 the filing of the petition] an initial freed child permanency hearing~~
~~14 and all subsequent permanency hearings shall be held in accordance with~~
~~15 article ten-A of this act.~~

16 § 6. Subdivision (a) of section 625 of the family court act, as
17 amended by chapter 663 of the laws of 2002, is amended to read as
18 follows:

19 (a) Upon completion of the fact-finding hearing, the dispositional
20 hearing may commence immediately after the required findings are made;
21 provided, however, that if all parties consent the court may, upon
22 motion of any party or upon its own motion, dispense with the disposi-
23 tional hearing and make an order of disposition on the basis of compe-
24 tent evidence admitted at the fact-finding hearing. Where the disposi-
25 tion ordered is the commitment of guardianship and custody in accordance
26 with section six hundred thirty-four of this [article] part, [~~a perman-~~
27 ~~ency hearing shall be completed pursuant to section one thousand fifty-~~
28 ~~five a of this act immediately following, but in no event later than~~
29 ~~sixty days after, the earlier of the court's statement of its order on~~
30 ~~the record or issuance of its written order. A notice of the permanency~~
31 ~~hearing and a petition and/or report, as directed by the court, shall be~~
32 ~~filed and provided to the parties, law guardian and individuals required~~
33 ~~to be notified in the manner and according to the schedule specified by~~
34 ~~the court in accordance with section one thousand fifty five a of this~~
35 ~~act. Subsequent permanency petitions shall be filed pursuant to section~~
36 ~~one thousand fifty five a of this act no later than six months after~~
37 ~~completion of the last permanency hearing, unless the court directs an~~
38 ~~earlier filing, and each subsequent permanency hearing shall be~~
39 ~~completed within sixty days of the filing of the petition] an initial
40 freed child permanency hearing and all subsequent permanency hearings
41 shall be held in accordance with article ten-A of this act.~~

42 § 7. Section 633 of the family court act is amended to read as
43 follows:

44 § 633. Suspended judgment. (a) Rules of court shall define permissible
45 terms and conditions of a suspended judgment. These terms and conditions
46 shall relate to the acts or omissions of the parent or other person
47 responsible for the care of the child.

48 (b) The maximum duration of a suspended judgment under this section is
49 one year, unless the court finds at the conclusion of that period that
50 exceptional circumstances require an extension of that period for [~~an~~]
51 one additional period of up to one year. Successive extensions may not
52 be granted.

53 (c) The order of suspended judgment must set forth the duration, terms
54 and conditions of the suspended judgment, and must contain a date
55 certain for a court review not later than thirty days prior to the expi-
56 ration of the period of suspended judgment. The order of suspended judg-

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1 ment must also state in conspicuous print that a failure to obey the
2 order may lead to its revocation and to the issuance of an order termi-
3 nating parental rights and committing the guardianship and custody of
4 the child to an authorized agency for the purposes of adoption. A copy
5 of the order of suspended judgment, along with the current permanency
6 plan, must be furnished to the respondent.

7 (d) Not later than sixty days before the expiration of the period of
8 suspended judgment, the petitioner shall file a report with the family
9 court and all parties, including the respondent and his or her attorney,
10 the law guardian and intervenors, if any, regarding the respondent's
11 compliance with the terms of suspended judgment. The report shall be
12 reviewed by the court on the scheduled court date. Unless a motion or
13 order to show cause has been filed prior to the expiration of the period
14 of suspended judgment alleging a violation or seeking an extension of
15 the period of the suspended judgment, the terms of the disposition of
16 suspended judgment shall be deemed satisfied and an order committing the
17 guardianship and custody of the child shall not be entered.

18 (e) If, prior to the expiration of the period of the suspended judg-
19 ment, a motion or order to show cause is filed that alleges a violation
20 of the terms and conditions of the suspended judgment, or that seeks to
21 extend the period of the suspended judgment for an additional period of
22 up to one year, then the period of the suspended judgment is tolled
23 until entry of the order that disposes of the motion or order to show
24 cause.

25 (f) Upon finding that the respondent has violated the terms and condi-
26 tions of the order of suspended judgment, the court may enter an order
27 revoking the order of suspended judgment and terminating the parental
28 rights of the respondent or, where such extension is in the best inter-
29 ests of the child, extend the period of suspended judgment for an addi-
30 tional period of up to one year, if no prior extension has been granted.

31 (g) If an order of suspended judgment has been satisfied or has been
32 extended, but the child nonetheless remains in foster care pursuant to a
33 placement under article ten of this act or section three hundred fifty-
34 eight-a of the social services law, a permanency hearing shall be
35 completed pursuant to section one thousand eighty-nine of this act imme-
36 diately following, but no later than sixty days after the earlier of the
37 court's statement of its order on the record or issuance of its written
38 order. If guardianship and custody of the child have been transferred to
39 the authorized agency upon an order revoking the order of suspended
40 judgment, a permanency hearing shall be completed pursuant to paragraph
41 one of subdivision (a) of section one thousand eighty-nine of this act
42 immediately following, but in no event later than sixty days after, the
43 earlier of the court's statement of its order on the record or issuance
44 of its written order.

45 § 8. Subdivision (k) of section 1012 of the family court act, as added
46 by chapter 7 of the laws of 1999, is amended to read as follows:

47 (k) "Permanency hearing" means a hearing held in accordance with
48 section [~~one thousand thirty-nine b, one thousand fifty-two, one thou-~~
49 ~~sand fifty five or one thousand fifty five a of this article] one thou-
50 sand eighty-nine of this act for the purpose of reviewing the foster
51 care status of the child and the appropriateness of the permanency plan
52 developed by the social services [~~official~~] district or agency.~~

53 § 9. The second undesignated paragraph of section 1016 of the family
54 court act, as amended by chapter 353 of the laws of 1997, is amended to
55 read as follows:

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1 Whenever a law guardian has been appointed by the family court pursu-
2 ant to section two hundred forty-nine of this act to represent a child
3 in a proceeding under this article, such appointment shall continue
4 without further court order or appointment during (i) an order of dispo-
5 sition issued by the court pursuant to section one thousand fifty-two of
6 this ~~[act]~~ article directing ~~[placement,]~~ supervision, protection or
7 suspending judgment, or any extension thereof ~~[or]~~; (ii) an adjournment
8 in contemplation of dismissal as provided for in section one thousand
9 thirty-nine of this ~~[act]~~ article or any extension thereof; or (iii) the
10 pendency of the foster care placement ordered pursuant to section one
11 thousand fifty-two of this article. All notices and reports required by
12 law shall be provided to such law guardian. Such appointment shall
13 terminate upon the expiration of such order, unless ~~[a petition has been~~
14 ~~filed pursuant to subdivision (b) of section one thousand fifty-five or~~
15 ~~one thousand fifty-five a of this article, or unless]~~ another appoint-
16 ment of a law guardian has been made by the court or unless such law
17 guardian makes application to the court to be relieved of his or her
18 appointment. Upon approval of such application to be relieved, the court
19 shall immediately appoint another law guardian to whom all notices and
20 reports required by law shall be provided.

21 § 10. Subdivisions 1 and 2 of section 1017 of the family court act,
22 subdivision 1 as amended by chapter 657 of the laws of 2003 and subdivi-
23 sion 2 as added by chapter 744 of the laws of 1989, are amended to read
24 as follows:

25 1. In any proceeding under this article, when the court determines
26 that a child must be removed from his or her home, pursuant to part two
27 of this article, or placed, pursuant to section ~~[ten hundred fifty-five]~~
28 one thousand fifty-five of this article, the court shall direct the
29 local commissioner of social services to conduct an immediate investi-
30 gation to locate any non-respondent parent of the child and any rela-
31 tives of the child, including all of the child's grandparents, and
32 inform them of the pendency of the proceeding and of the opportunity for
33 becoming foster parents or for seeking custody or care of the child, and
34 that the child may be adopted by foster parents if attempts at reunifi-
35 cation with the birth parent are not required or are unsuccessful~~[+~~
36 ~~and]~~. The local commissioner of social services shall record the
37 results of such investigation, including, but not limited to, the name,
38 last known address, social security number, employer's address and any
39 other identifying information to the extent known regarding any non-res-
40 pondent parent, in the uniform case record maintained pursuant to
41 section four hundred nine-f of the social services law. For the purpose
42 of this section, "non-respondent parent" shall include a person entitled
43 to notice of the pendency of the proceeding and of the right to inter-
44 vene as an interested party pursuant to subdivision (d) of section one
45 thousand thirty-five of this article, and a non-custodial parent enti-
46 tled to notice and the right to enforce visitation rights pursuant to
47 subdivision (e) of section one thousand thirty-five of this article. The
48 court shall determine:

49 (a) whether there is a suitable non-respondent parent or other person
50 related to the child with whom such child may appropriately reside; and

51 (b) in the case of a relative, whether such relative seeks approval as
52 a foster parent pursuant to the social services law for the purposes of
53 providing care for such child, or wishes to provide free care and custo-
54 dy for the child during the pendency of any orders pursuant to this
55 article.

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1 2. The court shall, upon receipt of the report of the investigation
2 ordered pursuant to subdivision one of this section:

3 (a) where the court determines that the child may reside with a suit-
4 able non-respondent parent or other relative or other suitable person
5 [~~related to such child~~], either:

6 (i) place the child [~~with~~] in the custody of such non-respondent
7 parent, other relative or other suitable person pursuant to article six
8 of this act and conduct such other and further investigations as the
9 court deems necessary; or

10 (ii) place the child in the custody of such non-respondent parent,
11 other relative or other suitable person pursuant to this article during
12 the pendency of the proceeding or until further order of the court,
13 whichever is earlier and conduct such other and further investigations
14 as the court deems necessary; or

15 (iii) remand or place the child, as applicable, with the local commis-
16 sioner of social services and direct such commissioner to have the child
17 reside with such relative or other suitable person and further direct
18 such commissioner pursuant to regulations of the [~~department~~] office of
19 [~~social~~] children and family services, to [~~perform~~] commence an investi-
20 gation of the home of such relative or other suitable person within
21 twenty-four hours and thereafter approve such relative or other suitable
22 person, if qualified, as a foster parent. If such home is found to be
23 unqualified for approval, the local commissioner shall report such fact
24 to the court forthwith.

25 (b) where the court determines that a suitable non-respondent parent
26 or other person related to the child cannot be located, remand or place
27 the child with a suitable person, pursuant to subdivision (b) of section
28 [~~ten hundred twenty seven~~] one thousand twenty-seven or subdivision (a)
29 of section [~~ten hundred fifty five~~] one thousand fifty-five of this
30 article, or remand or place the child in the custody of the local
31 commissioner of social services pursuant to subdivision (b) of section
32 [~~ten hundred twenty seven~~] one thousand twenty-seven or subdivision (a)
33 of section [~~ten hundred fifty five~~] one thousand fifty-five of this
34 article. The court in its discretion may direct that such commissioner
35 have the child reside in a specific certified foster home where the
36 court determines that such placement is in furtherance of the child's
37 best interests.

38 § 11. The family court act is amended by adding a new section 1018 to
39 read as follows:

40 § 1018. Conferencing and mediation. In any proceeding initiated pursu-
41 ant to this article, the court may, at its discretion, authorize the use
42 of conferencing or mediation at any point in the proceedings to further
43 a plan for the child that fosters the child's health, safety, and well-
44 being. Such conferencing or mediation may involve interested relatives
45 or other adults who are significant in the life of the child.

46 § 12. Section 1021 of the family court act, as amended by chapter 205
47 of the laws of 1990, is amended to read as follows:

48 § 1021. Temporary removal with consent. A peace officer, acting pursu-
49 ant to his or her special duties, or a police officer or an agent of a
50 duly authorized agency, association, society or institution may tempo-
51 rarily remove a child from the place where he or she is residing with
52 the written consent of his or her parent or other person legally respon-
53 sible for his or her care, if the child is suspected to be an abused or
54 neglected child under this article. The officer or agent shall, coinci-
55 dent with consent or removal, give written notice to the parent or other
56 person legally responsible for the child's care of the right to apply to

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1 the family court for the return of the child pursuant to section one
2 thousand twenty-eight of this article, and of the right to be repres-
3 ented by counsel and the procedures for those who are indigent to obtain
4 counsel in proceedings brought pursuant to this article. Such notice
5 shall also include the name, title, organization, address and telephone
6 number of the person removing the child; the name, address and telephone
7 number of the authorized agency to which the child will be taken, if
8 available; and the telephone number of the person to be contacted for
9 visits with the child. A copy of the instrument whereby the parent or
10 legally responsible person has given such consent to such removal shall
11 be appended to the petition alleging abuse or neglect of the removed
12 child and made a part of the permanent court record of the proceeding.
13 ~~[If the child is not returned within three days from the date of~~
14 ~~removal, the procedure required in part three of this article shall be~~
15 ~~applied forthwith.]~~ A copy of such instrument and notice of the tele-
16 phone number of the child protective agency to contact to ascertain the
17 date, time and place of the filing of the petition and of the hearing
18 that will be held pursuant to section one thousand twenty-seven of this
19 article shall be given to the parent or legally responsible person.
20 Unless the child is returned sooner, a petition shall be filed within
21 three court days from the date of removal. In such a case, a hearing
22 shall be held no later than the next court day after the petition is
23 filed and findings shall be made as required pursuant to section one
24 thousand twenty-seven of this article.

25 § 13. Subdivisions (a) and (b) of section 1022 of the family court
26 act, subdivision (a) as separately amended by chapters 478 and 527 of
27 the laws of 1988, the fourth undesignated paragraph of subdivision (a)
28 as added by chapter 727 of the laws of 1989, the closing paragraph of
29 subdivision (a) as added by chapter 171 of the laws of 1990 and subdivi-
30 sion (b) as added by chapter 962 of the laws of 1970, are amended to
31 read as follows:

32 (a) (i) The family court may enter an order directing the temporary
33 removal of a child from the place where he or she is residing before the
34 filing of a petition under this article, if ~~[(+i)]~~ (A) the parent or
35 other person legally responsible for the child's care is absent or,
36 though present, was asked and refused to consent to the temporary
37 removal of the child and was informed of an intent to apply for an order
38 under this section and of the information required by section one thou-
39 sand twenty-three of this ~~act~~ part; and

40 ~~[(+ii)]~~ (B) the child appears so to suffer from the abuse or neglect of
41 his or her parent or other person legally responsible for his or her
42 care that his or her immediate removal is necessary to avoid imminent
43 danger to the child's life or health; and

44 ~~[(+iii)]~~ (C) there is not enough time to file a petition and hold a
45 preliminary hearing under section one thousand twenty-seven of this
46 part.

47 (ii) When a child protective agency applies to a court for the immedi-
48 ate removal of a child pursuant to this subdivision, the court shall
49 calendar the matter for that day and shall continue the matter on
50 successive subsequent court days, if necessary, until a decision is made
51 by the court.

52 (iii) In determining whether temporary removal of the child is neces-
53 sary to avoid imminent risk to the child's life or health, the court
54 shall consider and determine in its order whether continuation in the
55 child's home would be contrary to the best interests of the child and
56 where appropriate, whether reasonable efforts were made prior to the

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1 date of application for the order directing such temporary removal to
2 prevent or eliminate the need for removal of the child from the home. If
3 the court determines that reasonable efforts to prevent or eliminate the
4 need for removal of the child from the home were not made but that the
5 lack of such efforts was appropriate under the circumstances, the court
6 order shall include such a finding.

7 (iv) If the court determines that reasonable efforts to prevent or
8 eliminate the need for removal of the child from the home were not made
9 but that such efforts were appropriate under the circumstances, the
10 court shall order the child protective agency to provide or arrange for
11 the provision of appropriate services or assistance to the child and the
12 child's family pursuant to section one thousand fifteen-a of this arti-
13 cle or subdivision (c) of this section.

14 (v) The court shall also consider and determine whether imminent risk
15 to the child would be eliminated by the issuance of a temporary order of
16 protection, pursuant to section [~~ten hundred~~] one thousand twenty-nine
17 of this [~~act~~] part, directing the removal of a person or persons from
18 the child's residence.

19 (vi) Any order directing the temporary removal of a child pursuant to
20 this section shall state the court's findings with respect to the neces-
21 sity of such removal, whether the respondent was present at the hearing
22 and, if not, what notice the respondent was given of the hearing, [~~and~~
23 ~~whether the removal or the request therefor has been made pursuant to~~
24 ~~this section or section ten hundred twenty one or ten hundred twenty~~
25 ~~four of this article~~] whether the respondent was represented by counsel,
26 and, if not, whether the respondent waived his or her right to counsel.

27 (vii) At the conclusion of a hearing where it has been determined that
28 a child should be removed from his or her parent or other person legally
29 responsible, the court shall set the date certain for an initial perman-
30 ency hearing pursuant to paragraph two of subdivision (a) of section one
31 thousand eighty-nine of this act. The date certain shall be included in
32 the written order issued pursuant to subdivision (b) of this section and
33 shall set forth the date certain scheduled for the permanency hearing.

34 (b) [~~The~~] Any written order pursuant to this section shall be issued
35 immediately, but in no event later than the next court day following the
36 removal of the child. The order shall specify the facility to which the
37 child is to be brought. Except for good cause shown or unless the child
38 is sooner returned to the place where he or she was residing, a petition
39 shall be filed under this article within three court days of the issu-
40 ance of the order. The court shall hold a hearing pursuant to section
41 one thousand twenty-seven of this part no later than the next court day
42 following the filing of the petition if the respondent was not present,
43 or was present and unrepresented by counsel, and has not waived his or
44 her right to counsel, for the hearing pursuant to this section.

45 § 14. Subdivision (c) of section 1026 of the family court act, as
46 amended by chapter 478 of the laws of 1987, is amended to read as
47 follows:

48 (c) If the child protective agency for any reason does not return the
49 child under this section after an emergency removal pursuant to section
50 one thousand twenty-four of this part on the same day that the child is
51 removed, or if the child protective agency concludes it appropriate
52 after an emergency removal pursuant to section one thousand twenty-four
53 of this part, it shall [~~forthwith~~] cause a petition to be filed under
54 this [~~act~~] part no later than the next court day after the child was
55 removed. The court may order an extension, only upon good cause shown,
56 of up to three court days from the date of such child's removal. A hear-

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1 ing shall be held no later than the next court day after the petition is
2 filed and findings shall be made as required pursuant to section one
3 thousand twenty-seven of this part.

4 § 15. The section heading and subdivision (a) of section 1027 of the
5 family court act, the section heading as added by chapter 962 of the
6 laws of 1970 and subdivision (a) as separately amended by chapters 478
7 and 527 of the laws of 1988, are amended and a new subdivision (h) is
8 added to read as follows:

9 [~~Preliminary~~] Hearing and preliminary orders after filing of petition.

10 (a) (i) In any case [~~involving abuse or in any case~~] where the child has
11 been removed without court order or where there has been a hearing
12 pursuant to section one thousand twenty-two of this part at which the
13 respondent was not present, or was not represented by counsel and did
14 not waive his or her right to counsel, the family court shall hold a
15 hearing [~~as soon as practicable~~]. Such hearing shall be held no later
16 than the next court day after the filing of a petition to determine
17 whether the child's interests require protection, including whether the
18 child should be returned to the parent or other person legally responsi-
19 ble, pending a final order of disposition and shall continue on succes-
20 sive court days, if necessary, until a decision is made by the court.

21 (ii) In any such case where the child has been removed, any person
22 originating a proceeding under this article shall, or the law guardian
23 may apply for, or the court on its own motion may order, a hearing at
24 any time after the petition is filed to determine whether the child's
25 interests require protection pending a final order of disposition. Such
26 hearing must be scheduled for no later than the next court day after the
27 application for such hearing has been made.

28 (iii) In any [~~other~~] case under this article in which a child has not
29 been removed from his or her parent or other person legally responsible,
30 any person originating a proceeding under this article or the law guard-
31 ian may apply for, or the court on its own motion may order, a hearing
32 at any time after the petition is filed to determine whether the child's
33 interests require protection, including whether the child should be
34 removed from his or her parent or other person legally responsible,
35 pending a final order of disposition. Such hearing must be scheduled for
36 no later than the next court day after the application for such hearing
37 has been made.

38 (iv) Notice of [~~the~~] a hearing shall be provided pursuant to section
39 one thousand twenty-three of this [~~act~~] part.

40 (h) At the conclusion of a hearing where it has been determined that a
41 child should be removed from his or her parent or other person legally
42 responsible, the court shall set a date certain for an initial permanen-
43 cy hearing pursuant to paragraph two of subdivision (a) of section one
44 thousand eighty-nine of this act. The date certain shall be included in
45 the written order issued pursuant to subdivision (b) of this section and
46 shall set forth the date certain scheduled for the permanency hearing. A
47 copy of such order shall be provided to the parent or other person
48 legally responsible for the child's care.

49 § 16. Subdivisions (a) and (c) of section 1035 of the family court
50 act, as amended by chapter 699 of the laws of 1986, are amended to read
51 as follows:

52 (a) On the filing of a petition [~~involving abuse~~] under this article
53 where the child has been removed from his or her home, unless a warrant
54 is issued pursuant to section one thousand thirty-seven of this part,
55 the court shall cause a copy of the petition and a summons to be issued
56 [~~forthwith~~] the same day the petition is filed, clearly marked on the

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1 face thereof "Child Abuse Case", as applicable, requiring the parent or
2 other person legally responsible for the child's care or with whom he
3 [~~is~~] or she had been residing to appear at the court within three court
4 days to answer the petition, unless a shorter time for a hearing to
5 occur is prescribed in part two of this article. [~~The court shall also,~~
6 ~~unless dispensed with for good cause shown, require the person thus~~
7 ~~summoned to produce the child at the time and place named.~~]

8 (c) On the filing of a petition under this article [~~in which neglect~~
9 ~~only is alleged~~] where the child has not been removed from his or her
10 home, the court shall forthwith cause a copy of the petition and a
11 summons to be issued, clearly marked on the face thereof "Child Abuse
12 Case", as applicable, requiring the parent or other person legally
13 responsible for the child's care or with whom [~~it~~] the child is residing
14 to appear at the court to answer the petition [~~within three court days,~~
15 ~~where the child has been temporarily removed under this article, other~~
16 ~~wise~~] within seven court days. The court may also require the person
17 thus summoned to produce the child at the time and place named.

18 § 17. Paragraph (i) of subdivision (f) of section 1051 of the family
19 court act, as added by chapter 430 of the laws of 1994, is amended to
20 read as follows:

21 (i) that the court will have the power to make an order of disposi-
22 tion, which may include an order placing the subject child or children
23 in foster care [~~for a period of up to one year,~~] until completion of the
24 initial permanency hearing scheduled pursuant to section one thousand
25 eighty-nine of this act and subject to [~~applications for review of such~~
26 ~~placement and applications for extensions of such placement from year to~~
27 ~~year~~] successive extensions of placement at any subsequent permanency
28 hearings;

29 § 18. Section 1055 of the family court act, as added by chapter 962 of
30 the laws of 1970, subdivision (b) as amended by chapter 117 of the laws
31 of 1982, paragraphs (i), (ii), (iii), (iv) and (vi) of subdivision (b)
32 as amended by chapter 7 of the laws of 1999, paragraph (v) of subdivi-
33 sion (b) as renumbered by chapter 538 of the laws of 1992, paragraph
34 (vii) of subdivision (b) as added by chapter 605 of the laws of 1990 and
35 as renumbered by chapter 538 of the laws of 1992, subdivision (c) as
36 amended by chapter 283 of the laws of 1990, subdivision (d) as amended
37 by chapter 666 of the laws of 1976, subdivision (e) as amended by chap-
38 ter 937 of the laws of 1974 and as relettered by chapter 220 of the laws
39 of 1975, subdivision (f) as added by chapter 962 of the laws of 1970 and
40 as relettered by chapter 220 of the laws of 1975, subdivision (g) as
41 amended by chapter 747 of the laws of 1989, subdivision (h) as amended
42 by chapter 663 of the laws of 2002 and subdivision (i) as added by chap-
43 ter 854 of the laws of 1990, is amended to read as follows:

44 § 1055. Placement. (a) For purposes of section one thousand fifty-two
45 of this part the court may place the child in the custody of a relative
46 or other suitable person, or of the local commissioner of social
47 services or of such other officer, board or department as may be author-
48 ized to receive children as public charges, or a duly authorized associ-
49 ation, agency, society or in an institution suitable for the placement
50 of a child.

51 (b) (i) [~~Placements under this section may be for an initial period of~~
52 ~~up to one year and the court in its discretion may make successive~~
53 ~~extensions for additional periods of up to one year each. A petition to~~
54 ~~extend a placement accompanied by supporting affidavits or reports shall~~
55 ~~be filed at least sixty days prior to the expiration of the period of~~
56 ~~placement, except for good cause shown. For the purposes of calculating~~

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~~1 the initial period of placement, such placement shall be deemed to have
2 commenced the earlier of the date of the fact finding of abuse or
3 neglect of the child pursuant to section one thousand fifty one of this
4 article or sixty days after the date the child was removed from his or
5 her home in accordance with the provisions of this article. Periodic
6 court review of the status of a child who was originally placed pursuant
7 to this section and subsequently freed for adoption will be governed by
8 section one thousand fifty five a of this article.~~

~~9 (ii) No placement shall be extended or continued pursuant to this
10 subdivision except upon a permanency hearing held concerning the need
11 for extending or continuing the placement. Such hearing shall be held
12 upon the petition filed by the person, agency or institution with whom
13 the child was placed, or the motion of the child or the child's law
14 guardian or of the foster parent or parents in whose home the child
15 resides at the time of the application for extension of placement. The
16 initial permanency hearing shall be held no later than twelve months
17 following placement. Placement shall be deemed to have commenced as set
18 forth in paragraph (i) of this subdivision. Each subsequent permanency
19 hearing shall be held no later than twelve months following the preced-
20 ing permanency hearing.~~

~~21 (iii) Notice of the permanency hearing and a copy of the petition and
22 any supporting affidavits or reports shall be served by the petitioner
23 upon the person, agency or institution with whom the child was placed,
24 upon the agency supervising the care of the child on behalf of the agen-
25 cy with whom the child was placed, upon the child's parent or other
26 person responsible for the child's care, upon the foster parent or
27 parents in whose home the child resides at the time of the filing of the
28 petition for extension of placement and upon the child or the child's
29 law guardian at the time of the original placement, each of whom shall
30 be a party entitled to participate in the proceeding. The appointment of
31 the law guardian who represented the child in the most recent proceeding
32 under this article shall continue without further court order or
33 appointment, unless another appointment of a law guardian has been made
34 by the court. All notices and reports required by law shall be provided
35 to such law guardian. The law guardian may be relieved of his or her
36 representation upon application to the court for termination of the
37 appointment. If the application is approved, the court shall immediately
38 appoint another law guardian to whom all notices and reports required by
39 law shall be provided. Except as provided for herein, service of notice
40 of the permanency hearing shall be made in such manner and on such
41 notices as the court may, in its discretion, prescribe. Unless otherwise
42 directed by the court, service upon the child's parent or other person
43 responsible for the child's care shall be made by mail to such person's
44 last known residence at least eight days before the time stated in the
45 notice for the appearance in court. Such hearing may not be commenced
46 without proof satisfactory to the court that such person had actual
47 notice of the hearing. In any case where such proof of actual notice is
48 not before the court, the court shall direct that service be made pursu-
49 ant to the provisions of section three hundred eight of the civil prac-
50 tice law and rules.~~

~~51 (iv)(A) At the permanency hearing the court shall determine:~~

~~52 1. whether the conditions and circumstances giving rise to the order
53 of placement, or extension thereof, have changed since the issuance of
54 such order or last extension thereof; and~~

~~55 2. whether the child services plan prepared in accordance with section
56 four hundred nine c of the social services law requires review, adjust-~~

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1 ~~ment or modification and, if so, the court may adjust or modify such~~
2 ~~plan and may issue appropriate orders pursuant to section one thousand~~
3 ~~fifteen a of this chapter; and~~

4 ~~3. the extent to which such plan has been complied with by the~~
5 ~~respondent and the supervising agency during the term of the order of~~
6 ~~placement or extension thereof.~~

7 ~~(D) in determining whether an extension of placement is consistent~~
8 ~~with the best interests of the child, the court shall consider and~~
9 ~~determine in its order:~~

10 ~~1. whether an extension is consistent with the permanency goal estab-~~
11 ~~lished for the child in the child services plan as approved, adjusted or~~
12 ~~modified by the court;~~

13 ~~2. whether the child would be at risk of abuse or neglect if returned~~
14 ~~to the parent or other person legally responsible for the child's care;~~

15 ~~3. in the case of a child placed outside this state, whether the out-~~
16 ~~of state placement continues to be appropriate and in the best interests~~
17 ~~of the child;~~

18 ~~4. where appropriate, that reasonable efforts were made to make it~~
19 ~~possible for the child to safely return to his or her home, or the~~
20 ~~permanency plan for the child is adoption, guardianship or some other~~
21 ~~permanent living arrangement other than reunification with the parent or~~
22 ~~parents of the child, reasonable efforts are being made to make and~~
23 ~~finalize such alternate permanent placement;~~

24 ~~5. whether or when the child: (i) will be returned to the parent; (ii)~~
25 ~~should be placed for adoption with the social services official filing a~~
26 ~~petition for termination of parental rights; (iii) should be referred~~
27 ~~for legal guardianship; (iv) should be placed permanently with a fit and~~
28 ~~willing relative; or (v) should be placed in another planned permanent~~
29 ~~living arrangement if the social services official has documented to the~~
30 ~~court a compelling reason for determining that it would not be in the~~
31 ~~best interest of the child to return home, be referred for termination~~
32 ~~of parental rights and placed for adoption, placed with a fit and will-~~
33 ~~ing relative, or placed with a legal guardian;~~

34 ~~6. in the case of a child who has attained the age of sixteen, the~~
35 ~~services needed, if any, to assist the child to make the transition from~~
36 ~~foster care to independent living; and~~

37 ~~7. any other factors which the court deems appropriate.~~

38 ~~The court shall state its findings thereon in writing. A copy of the~~
39 ~~court's decision and the child services plan shall be given to the~~
40 ~~respondent.~~

41 ~~(v) Pending final determination of a petition to extend such placement~~
42 ~~filed in accordance with the provisions of this section, the court, for~~
43 ~~good cause shown, may enter a temporary order extending the placement~~
44 ~~for a period not to exceed thirty days. Such temporary order may be~~
45 ~~renewed upon good cause shown.~~

46 ~~(vi) In any order of placement or extension of placement made under~~
47 ~~this section the court shall state on the record its findings supporting~~
48 ~~the length of placement ordered.~~

49 ~~Such order of placement or extension of placement shall include at the~~
50 ~~least:~~

51 ~~(A) a description of the visitation plan;~~

52 ~~(B) a direction that the respondent or respondents shall be notified~~
53 ~~of the planning conference or conferences to be held pursuant to subdi-~~
54 ~~vision three of section four hundred nine-e of the social services law,~~
55 ~~of their right to attend the conference, and of their right to have~~
56 ~~counsel or other representative or companion with them.~~

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~~A copy of the court's order and the service plan shall be given to the respondent. The order shall also contain a notice that if the child remains in foster care for fifteen of the most recent twenty two months, the agency may be required by law to file a petition to terminate parental rights.~~

~~Except as provided for herein, in any order issued pursuant to this section, the court may require the child protective agency to make progress reports to the court, the parties, and the child's law guardian on the implementation of such order. Where the order of disposition is issued upon the consent of the parties and the child's law guardian, such agency shall report to the court, the parties and the child's law guardian no later than ninety days after the issuance of the order, unless the court determines that the facts and circumstances of the case do not require such report to be made.~~

~~(vii) (A)] Children placed under this section shall be placed until the court completes the initial permanency hearing scheduled pursuant to article ten-A of this act. Should the court determine pursuant to article ten-A of this act that placement shall be extended beyond completion of the scheduled permanency hearing, such extended placement and any such successive extensions of placement shall expire at the completion of the next scheduled permanency hearing, unless the court shall determine, pursuant to article ten-A of this act, to continue to extend such placement.~~

~~(ii) Upon placing a child under the age of one, who has been abandoned, with a local commissioner of social services, the court shall, where either of the parents do not appear after due notice, include in its order of disposition pursuant to section [ten hundred fifty two] one thousand fifty-two of this part, a direction that such commissioner shall promptly commence a diligent search to locate the child's non-appearing parent or parents or other known relatives who are legally responsible for the child, and to commence a proceeding to commit the guardianship and custody of such child to an authorized agency pursuant to section three hundred eighty-four-b of the social services law, six months from the date that care and custody of the child was transferred to the commissioner, unless there has been communication and visitation between such child and ~~his~~ such parent or parents or other known relatives or persons legally responsible for the child. In addition to such diligent search the local commissioner of social services shall provide written notice to the child's parent or parents or other known relatives or persons legally responsible as provided for in this paragraph. Such notice shall be served upon such parent or parents or other known relatives or persons legally responsible in the manner required for service of process pursuant to section six hundred seventeen of this ~~chapter~~ act. Information regarding such diligent search, including, but not limited to, the name, last known address, social security number, employer's address and any other identifying information to the extent known regarding the non-appearing parent, shall be recorded in the uniform case record maintained pursuant to section four hundred nine-f of the social services law.~~

~~(B) Contents of notice.] (iii) Notice as required by [subparagraph (A) of this]~~ (iii) Notice as required by [subparagraph (A) of this] paragraph (ii) of this subdivision shall state:

~~1.] (A) that the local commissioner of social services shall initiate a proceeding to commit the guardianship and custody of the subject child to an authorized agency and that such proceeding shall be commenced six months from the date the child was placed in the care and custody of [the] such commissioner with such date to be specified in the notice;~~

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1 ~~[2.]~~ (B) that there has been no visitation and communication between
2 the parent and the child since the child has been placed with the local
3 commissioner of social services and that if no such visitation and
4 communication with the child occurs within six months of the date the
5 child was placed with such commissioner the child will be deemed an
6 abandoned child as defined in section three hundred eighty-four-b of the
7 social services law and a proceeding will be commenced to commit the
8 guardianship and custody of the subject child to an authorized agency;

9 ~~[3.]~~ (C) that it is the legal responsibility of the local commissioner
10 of social services to reunite and reconcile families whenever possible
11 and ~~[that the commissioner offers]~~ to offer services and assistance for
12 that purpose;

13 ~~[4.]~~ (D) the name, address and telephone number of the caseworker
14 assigned to the subject child who can provide information, services and
15 assistance with respect to reuniting the family;

16 ~~[5.]~~ (E) that it is the responsibility of the parent, relative or
17 other person legally responsible ~~[relative of]~~ for the child to visit
18 and communicate with the child and that such visitation and communi-
19 cation may avoid the necessity of initiating a petition for the transfer
20 of custody and guardianship of the child.

21 ~~[(c)]~~ Such notice shall be printed in both Spanish and English and
22 contain in conspicuous print and in plain language the information set
23 forth in ~~[subparagraph (B) of]~~ this paragraph.

24 (c) ~~[In addition to or in lieu of an order of placement or extension
25 or continuation of a placement made pursuant to subdivision (b), the
26 court may make an order directing a child protective agency, social
27 services official or other duly authorized agency to undertake diligent
28 efforts to encourage and strengthen the parental relationship when it
29 finds such efforts will not be detrimental to the best interests of the
30 child. Such efforts shall include encouraging and facilitating visita-
31 tion with the child by the parent or other person legally responsible
32 for the child's care. Such order may include a specific plan of action
33 for such agency or official including, but not limited to, requirements
34 that such agency or official assist the parent or other person responsi-
35 ble for the child's care in obtaining adequate housing, employment,
36 counseling, medical care or psychiatric treatment. Such order shall also
37 include encouraging and facilitating visitation with the child by the
38 non-custodial parent and grandparents who have obtained orders pursuant
39 to part eight, and may include encouraging and facilitating visitation
40 with the child by the child's siblings. Nothing in this subdivision
41 shall be deemed to limit the authority of the court to make an order
42 pursuant to section two hundred fifty five of this act.]~~

43 (d) ~~[In addition to or in lieu of an order of extension or continuation
44 of a placement made pursuant to subdivision (b), the court may make an
45 order directing a social services official or other duly authorized
46 agency to institute a proceeding to legally free the child for adoption,
47 if the court finds reasonable cause to believe that grounds therefor
48 exist. Upon a failure by such official or agency to institute such a
49 proceeding within ninety days after entry of such order, the court shall
50 permit the foster parent or parents in whose home the child resides to
51 institute such a proceeding unless the social services official or other
52 duly authorized agency caring for the child, for good cause shown and
53 upon due notice to all parties to the proceeding, has obtained a modifi-
54 cation or extension of such order, or unless the court has reasonable
55 cause to believe that such foster parent or parents would not obtain~~

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1 ~~approval of their petition to adopt the child in a subsequent adoption~~
2 ~~proceeding.~~

3 ~~(c)~~] No placement may be made or continued under this section beyond
4 the child's eighteenth birthday without his or her consent and in no
5 event past his or her twenty-first birthday.

6 ~~(f)~~ (d) If a child is placed in the custody of the local commission-
7 er of social services or other officer, board or department authorized
8 to receive children as public charges, such person shall provide for
9 such child as in the case of a destitute child or as otherwise author-
10 ized by law.

11 ~~(g)~~ (e) If the parent or person legally responsible for the care of
12 any such child or with whom such child resides receives public assist-
13 ance and care, any portion of which is attributable to such child, a
14 copy of the order of the court providing for the placement of such child
15 from his or her home shall be furnished to the appropriate social
16 services official, who shall reduce the public assistance and care
17 furnished such parent or other person by the amount attributable to such
18 child, provided, however, that when the child service plan prepared
19 pursuant to section four hundred nine-e of the social services law
20 includes a goal of discharge of the child to the parent or person legal-
21 ly responsible for the care of the child or other member of the house-
22 hold, such social services official shall not, to the extent that feder-
23 al reimbursement is available therefor, reduce the portion attributable
24 to such child which is intended to meet the cost of shelter and fuel for
25 heating.

26 ~~(h)~~ (f) Any order made under this section shall be suspended upon
27 the entry of an order of disposition with respect to a child whose
28 custody and guardianship have been committed pursuant to section three
29 hundred eighty-four-b of the social services law, and shall expire upon
30 the expiration of the time for appeal of such order or upon the final
31 determination of any such appeal and any subsequent appeals authorized
32 by law; provided, however, that where custody and guardianship have been
33 committed pursuant to section three hundred eighty-four-b of the social
34 services law or where the child has been surrendered pursuant to section
35 three hundred eighty-three-c or three hundred eighty-four of the social
36 services law, the child shall nonetheless be deemed to continue in
37 foster care until such time as an adoption or other alternative living
38 arrangement is finalized. A permanency hearing or hearings regarding
39 such child shall be conducted in accordance with ~~section one thousand~~
40 ~~fifty five a~~ article ten-A of this act. Nothing in this subdivision
41 shall cause such order of placement to be suspended or to expire with
42 respect to any parent or other person whose consent is required for an
43 adoption against whom an order of disposition committing guardianship
44 and custody of the child has not been made.

45 ~~(i)~~ (g) In making an order under this section, the court may direct
46 a local commissioner of social services to place the subject child
47 together with minor siblings or half-siblings who have been placed in
48 the custody of the commissioner, or to provide or arrange for regular
49 visitation and other forms of communication between such child and
50 siblings where the court finds that such placement or visitation and
51 communication is in the child's best interests. Placement or regular
52 visitation and communication with siblings or half-siblings shall be
53 presumptively in the child's best interests unless such placement or
54 visitation and communication would be contrary to the child's health,
55 safety or welfare, or the lack of geographic proximity precludes or
56 prevents visitation.

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1 § 19. Section 1055-a of the family court act is REPEALED and a new
2 section 1055-a is added to read as follows:

3 § 1055-a. Substantial failure of a material condition of surrender;
4 enforcement of a contact agreement. (a) In case of a substantial failure
5 of a material condition in a surrender executed pursuant to section
6 three hundred eighty-three-c of the social services law prior to finali-
7 zation of the adoption of the child, the court shall possess continuing
8 jurisdiction in accordance with subdivision six of such section to
9 rehear the matter upon the filing of a petition by the authorized agen-
10 cy, the parent or the law guardian for the child or whenever the court
11 deems necessary. In such case, the authorized agency shall notify the
12 parent, unless such notice is expressly waived by a statement written by
13 the parent and appended to or included in such instrument, the law guar-
14 dian for the child and the court that approved the surrender within
15 twenty days of any substantial failure to comply with a material condi-
16 tion of the surrender prior to the finalization of the adoption of the
17 child. In such case, the authorized agency shall file a petition on
18 notice to the parent unless notice is expressly waived by a statement
19 written by the parent and appended to or included in such instrument and
20 the law guardian in accordance with this section within thirty days of
21 such failure, except for good cause shown, in order for the court to
22 review such failure and, where necessary, to hold a hearing; provided,
23 however, that in the absence of such filing, the parent and/or law guar-
24 dian for the child may file such a petition at any time up to sixty days
25 after notification of the failure. Such petition filed by a parent or
26 law guardian must be filed prior to the adoption of the child.

27 (b) If an agreement for continuing contact and communication pursuant
28 to paragraph (b) of subdivision two of section three hundred eighty-
29 three-c of the social services law is approved by the court, and the
30 child who is the subject of the approved agreement has not yet been
31 adopted, any party to the approved agreement may file a petition with
32 the family court in the county where the agreement was approved to
33 enforce such agreement. A copy of the approved agreement shall be
34 annexed to such petition. The court shall enter an order enforcing
35 communication or contact pursuant to the terms and conditions of the
36 agreement unless the court finds that enforcement would not be in the
37 best interests of the child.

38 (c) Nothing in this section shall limit the rights and remedies avail-
39 able to the parties and the law guardian pursuant to section one hundred
40 twelve-b of the domestic relations law with respect to a failure to
41 comply with a material condition of a surrender subsequent to the final-
42 ization of the adoption of the child.

43 § 20. Section 1058 of the family court act, as amended by chapter 75
44 of the laws of 1991, is amended to read as follows:

45 § 1058. Expiration of orders. No later than sixty days prior to the
46 expiration of an order issued pursuant to paragraph (i), (ii), (iv), or
47 (v) of subdivision (a) of section [~~ten hundred fifty-two~~ one thousand
48 fifty-two of this [~~act~~ part or [~~at~~ prior to the conclusion of the
49 period of an adjournment in contemplation of dismissal pursuant to
50 section [~~ten hundred thirty-nine~~ one thousand thirty-nine of this [~~act~~
51 article, where no application has been made seeking extension of such
52 orders or adjournments and, with respect to an adjournment in contem-
53 plation of dismissal, no violations of the court's order are before the
54 court, the child protective agency shall, whether or not the child has
55 been or will be returned to the family, report to the court, the
56 parties, including any non-respondent parent and the child's law guardi-

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1 an on the status and [~~location~~] circumstances of the child and family
2 and any actions taken or contemplated by such agency with respect to
3 such child and family. [~~With respect to an order of placement pursuant
4 to section ten hundred fifty five of this act, such report shall include
5 an assessment of whether the child's return to the family would subject
6 the child to imminent risk. The court shall, where it deems appropriate,
7 request additional information and make such additional orders as are
8 authorized by law.~~]

9 § 21. Section 1062 of the family court act, as added by chapter 962 of
10 the laws of 1970, is amended to read as follows:

11 § 1062. [~~Petition~~] Motion to terminate placement. Any interested
12 person acting on behalf of a child placed under section one thousand
13 fifty-five of this article, the child's parent, or the person legally
14 responsible for the child may [~~petition~~] make a motion to the court for
15 an order terminating the placement. The [~~petition must be verified and~~]
16 motion must [~~show~~]:

17 (a) show that an application for the child's return to his or her home
18 was made to an appropriate person in the place in which the child was
19 placed;

20 (b) show that the application was denied or was not granted within
21 thirty days from the day application was made; and

22 (c) be accompanied by a sworn affidavit stating the grounds for the
23 [~~petition~~] motion.

24 § 22. Section 1063 of the family court act, as added by chapter 962 of
25 laws of 1970, is amended to read as follows:

26 § 1063. Service of [~~petition~~] motion; answer. A copy of a [~~petition~~]
27 motion under section one thousand sixty-two of this part shall promptly
28 be served by regular mail upon the duly authorized agency or the insti-
29 tution having custody of the [~~person~~] child and upon the law guardian,
30 each of whose duty it is to file an answer to the [~~petition~~] motion
31 within five days of the receipt of the motion.

32 § 23. Section 1064 of the family court act, as added by chapter 962 of
33 the laws of 1970, is amended to read as follows:

34 § 1064. Examination of [~~petition~~] motion and [~~answer~~] answers; hear-
35 ing. The court shall promptly examine the [~~petition~~] motion and [~~answer~~]
36 answers. If the court concludes that a hearing should be had, it may
37 proceed upon due notice to all concerned to hear the facts and determine
38 whether continued placement serves the purposes of this article. If the
39 court concludes that a hearing need not be had, it shall enter an order
40 granting or denying the [~~petition~~] motion.

41 § 24. Section 1065 of the family court act, as added by chapter 962 of
42 the laws of 1970, is amended to read as follows:

43 § 1065. Orders on hearing. (a) If the court determines after hearing
44 that continued placement serves the purposes of this article, it shall
45 deny the [~~petition~~] motion. The court may, on its own motion, [~~reduce
46 the duration of the placement~~] determine a schedule for the return of
47 the child, change the agency or institution in which the child is
48 placed, or direct the agency or institution to make such other arrange-
49 ments for the child's care and welfare as the facts of the case may
50 require.

51 (b) If the court determines after hearing that continued placement
52 does not serve the purposes of this article, the court shall discharge
53 the child from the custody of the agency or the institution in accord
54 with section [~~three hundred fifty-four~~] one thousand fifty-four of this
55 article.

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1 § 25. Section 1066 of the family court act, as added by chapter 962 of
2 the laws of 1970, is amended to read as follows:

3 § 1066. Successive [~~petitions~~] motions. If a [~~petition~~] motion under
4 section [~~three hundred sixty-two~~] one thousand sixty-two of this part is
5 denied, it may not be renewed for a period of ninety days after the
6 denial, unless the order of denial permits renewal at an earlier time.

7 § 26. Section 1068 of the family court act, as added by chapter 962 of
8 the laws of 1970, is amended to read as follows:

9 § 1068. Action on return from agency or institution. If a person is
10 returned to the court under section [~~three hundred sixty-seven~~] one
11 thousand sixty-seven of this part, the court may make any order that
12 might have been made at the time of the order of placement.

13 § 27. The family court act is amended by adding a new article 10-A to
14 read as follows:

15 ARTICLE 10-A

16 PERMANENCY HEARINGS FOR CHILDREN PLACED OUT OF THEIR HOMES

17 Section 1086. Purpose.

18 1087. Definitions.

19 1088. Continuing court jurisdiction.

20 1089. Permanency hearings.

21 1090. Representation of parties.

22 § 1086. Purpose. The purpose of this article is to establish uniform
23 procedures for permanency hearings for all children who are placed in
24 foster care pursuant to section three hundred fifty-eight-a, three
25 hundred eighty-four or three hundred eighty-four-a of the social
26 services law or pursuant to section one thousand twenty-two, one thou-
27 sand twenty-seven, or one thousand fifty-two of this act; children who
28 are directly placed with a relative pursuant to section one thousand
29 seventeen or one thousand fifty-five of this act; and children who are
30 freed for adoption. It is meant to provide children placed out of their
31 homes timely and effective judicial review that promotes permanency,
32 safety and well-being in their lives.

33 § 1087. Definitions. When used in this article, the following terms
34 shall have the following meanings:

35 (a) "Child" shall mean a person under the age of eighteen who is
36 placed in foster care pursuant to section three hundred fifty-eight-a,
37 three hundred eighty-four or three hundred eighty-four-a of the social
38 services law or pursuant to section one thousand twenty-two, one thou-
39 sand twenty-seven, or one thousand fifty-two of this act; or directly
40 placed with a relative pursuant to section one thousand seventeen or one
41 thousand fifty-five of this act; or who has been freed for adoption or a
42 person between the ages of eighteen and twenty-one who has consented to
43 continuation in foster care.

44 (b) "Child freed for adoption" shall mean a person whose custody and
45 guardianship has been committed to an authorized agency pursuant to
46 section three hundred eighty-three-c, three hundred eighty-four, or
47 three hundred eighty-four-b of the social services law. Such category
48 shall include a person whose parent or parents have died during the
49 period in which the child was in foster care and for whom there is no
50 surviving parent who would be entitled to notice or consent pursuant to
51 section one hundred eleven or one hundred eleven-a of the domestic
52 relations law. Such category shall not include a child who has been
53 freed for adoption with respect to one parent but who has another parent
54 whose consent to an adoption is required pursuant to section one hundred
55 eleven of the domestic relations law.

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1 (c) "Foster care" shall mean care provided by an authorized agency to
2 a child in a foster family, free or boarding home; agency boarding home;
3 group home; child care institution, health care facility or any combina-
4 tion thereof.

5 (d) "Agency" means an authorized agency as defined in paragraphs (a)
6 and (b) of subdivision ten of section three hundred seventy-one of the
7 social services law, to which the care and custody or custody and guar-
8 dianship of a child has been transferred or committed.

9 (e) "Permanency hearing report" shall mean a sworn report submitted by
10 the social services district to the court and the parties prior to each
11 permanency hearing regarding the health and well-being of the child, the
12 reasonable efforts that have been made since the last hearing to promote
13 permanency for the child, and the recommended permanency plan for the
14 child.

15 § 1088. Continuing court jurisdiction. If a child is placed pursuant
16 to section three hundred fifty-eight-a, three hundred eighty-four, or
17 three hundred eighty-four-a of the social services law, or pursuant to
18 section one thousand seventeen, one thousand twenty-two, one thousand
19 twenty-seven or one thousand fifty-two of this act, or directly placed
20 with a relative pursuant to section one thousand seventeen or one thou-
21 sand fifty-five of this act; or if the child is freed for adoption
22 pursuant to section three hundred eighty-three-c, three hundred eighty-
23 four or three hundred eighty-four-b of the social services law, the case
24 shall remain on the court's calendar and the court shall maintain juris-
25 isdiction over the case until the child is discharged from placement and
26 all orders regarding supervision, protection or services have expired.
27 The court shall rehear the matter whenever it deems necessary or desira-
28 ble, or upon motion by any party entitled to notice in proceedings under
29 this article, or by the law guardian for the child, and whenever a
30 permanency hearing is required by this article. While the court main-
31 tains jurisdiction over the case, the provisions of section one thousand
32 thirty-eight of this act shall continue to apply.

33 § 1089. Permanency hearings. (a) Scheduling, commencement and
34 completion of permanency hearings. (1) Children freed for adoption. At
35 the conclusion of the dispositional hearing at which the child was freed
36 for adoption in a proceeding pursuant to section three hundred eighty-
37 three-c, three hundred eighty-four or three hundred eighty-four-b of the
38 social services law, the court shall set a date certain for the initial
39 freed child permanency hearing and advise all parties in court of the
40 date set, except for the respondent or respondents. The permanency hear-
41 ing shall be commenced no later than thirty days after the hearing at
42 which the child was freed and shall be completed within thirty days,
43 unless the court determines to hold the permanency hearing immediately
44 upon completion of the hearing at which the child was freed, provided
45 adequate notice has been given.

46 (2) All other permanency hearings. At the conclusion of the hearing
47 pursuant to section one thousand twenty-two or one thousand twenty-seven
48 of this act at which the child was remanded or placed, the court shall
49 set a date certain for an initial permanency hearing and advise all
50 parties in court of the date set. The initial permanency hearing shall
51 be commenced no later than six months from the date which is sixty days
52 after the child was removed from his or her home and shall be completed
53 within thirty days of commencement.

54 (3) Subsequent permanency hearings for a child who remains in foster
55 care or who is freed for adoption shall be commenced no later than six

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1 months from the completion of the previous permanency hearing and shall
2 be completed within thirty days of commencement.

3 (b) Notice of permanency hearings. (1) No later than fourteen days
4 before the date certain for a permanency hearing scheduled pursuant to
5 this section, the local social services district shall serve the notice
6 of the permanency hearing and the permanency hearing report by regular
7 mail upon:

8 (i) the child's parent including any non-respondent parent and any
9 other person legally responsible for the child's care at the most recent
10 address known to the local social services district or agency, and the
11 foster parent in whose home the child currently resides, each of whom
12 shall be a party to the proceeding; and

13 (ii) the agency supervising the care of the child on behalf of the
14 social services district with whom the child was placed, the child's law
15 guardian, and the attorney for the respondent parent.

16 (2) The notice and the permanency hearing report shall also be
17 provided to any pre-adoptive parent or relative providing care for the
18 child. The notice of the permanency hearing only shall be provided to a
19 former foster parent in whose home the child previously had resided for
20 a continuous period of twelve months in foster care, if any. Provided,
21 however, that such pre-adoptive parent, relative, or former foster
22 parent, on the basis of such notice, shall have an opportunity to be
23 heard but shall not be a party to the permanency hearing. The failure of
24 such pre-adoptive parent, relative or former foster parent to appear at
25 a permanency hearing shall constitute a waiver of the opportunity to be
26 heard. Such failure to appear shall not cause a delay of the permanency
27 hearing nor be a ground for the invalidation of any order issued by the
28 court pursuant to this section.

29 (c) Content of the permanency hearing report. The permanency hearing
30 report shall include, but need not be limited to, up-to-date and accu-
31 rate information regarding:

32 (1) the child's current permanency goal, which may be:

33 (i) return to the parent or parents;

34 (ii) placement for adoption with the local social services official
35 filing a petition for termination of parental rights;

36 (iii) referral for legal guardianship;

37 (iv) permanent placement with a fit and willing relative; or

38 (v) placement in another planned permanent living arrangement that
39 includes a significant connection to an adult who is willing to be a
40 permanency resource for the child, including documentation of the
41 compelling reason for determining that it would not be in the best
42 interests of the child to be returned home, placed for adoption, placed
43 with a legal guardian, or placed with a fit and willing relative;

44 (2) the health, well-being, and status of the child since the last
45 hearing including:

46 (i) a description of the child's health and well-being;

47 (ii) information regarding the child's current placement;

48 (iii) an update on the educational and other progress the child has
49 made since the last hearing including a description of the steps that
50 have been taken by the local social services district or agency to
51 enable prompt delivery of appropriate educational and vocational
52 services to the child, including, but not be limited to:

53 (A) where the child is subject to article sixty-five of the education
54 law or elects to participate in an educational program leading to a high
55 school diploma, the steps that the local social services district or
56 agency has taken to promptly enable the child to be enrolled or to

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1 continue enrollment in an appropriate school or educational program
2 leading to a high school diploma;

3 (B) where the child is eligible to be enrolled in a pre-kindergarten
4 program pursuant to section thirty-six hundred two-e of the education
5 law, the steps that the local social services district or agency has
6 taken to promptly enable the child to be enrolled in an appropriate
7 pre-kindergarten program, if available;

8 (C) where the child is under three years of age and is involved in an
9 indicated case of child abuse or neglect, or where the local social
10 services district suspects that the child may have a disability as
11 defined in subdivision five of section twenty-five hundred forty-one of
12 the public health law or if the child has been found eligible to receive
13 early intervention or special educational services prior to or during
14 the foster care placement, in accordance with title two-A of article
15 twenty-five of the public health law or article eighty-nine of the
16 education law, the steps that the local social services district or
17 agency has taken to make any necessary referrals of the child for early
18 intervention, pre-school special educational or special educational
19 evaluations or services, as appropriate, and any available information
20 regarding any evaluations and services which are being provided or are
21 scheduled to be provided in accordance with applicable law; and

22 (D) where the child is at least sixteen and not subject to article
23 sixty-five of the education law and elects not to participate in an
24 educational program leading to a high school diploma, the steps that the
25 local social services district has taken to assist the child to become
26 gainfully employed or enrolled in a vocational program;

27 (iv) a description of the visitation plan or plans describing the
28 persons with whom the child visits, including any siblings, and the
29 frequency, duration and quality of the visits;

30 (v) where a child has attained the age of fourteen, a description of
31 the services and assistance that are being provided to enable the child
32 to learn independent living skills; and

33 (vi) a description of any other services being provided to the child;

34 (3) the status of the parent, including:

35 (i) the services that have been offered to the parent to enable the
36 child to safely return home;

37 (ii) the steps the parent has taken to use the services;

38 (iii) any barriers encountered to the delivery of such services;

39 (iv) the progress the parent has made toward reunification; and

40 (v) a description of any other steps the parent has taken to comply
41 with and achieve the permanency plan, if applicable.

42 (4) a description of the reasonable efforts to achieve the child's
43 permanency plan that have been taken by the local social services
44 district or agency since the last hearing. The description shall
45 include:

46 (i) unless the child is freed for adoption or there has been a deter-
47 mination by a court that such efforts are not required pursuant to
48 section one thousand thirty-nine-b of this act, the reasonable efforts
49 that have been made by the local social services district or agency to
50 eliminate the need for placement of the child and to enable the child to
51 safely return home, including a description of any services that have
52 been provided;

53 (ii) where the permanency plan is adoption, guardianship, placement
54 with a fit and willing relative or another planned permanent living
55 arrangement other than return to parent, the reasonable efforts that
56 have been made by the local social services district or agency to make

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1 and finalize such alternate permanent placement, including a description
2 of any services that have been provided;
3 (iii) where return home of the child is not likely, the reasonable
4 efforts that have been made by the local social services district or
5 agency to evaluate and plan for another permanent plan and any steps
6 taken to further a permanent plan other than return to the child's
7 parent; or
8 (iv) where a child has been freed for adoption, a description of the
9 reasonable efforts that will be taken to facilitate the adoption of the
10 child; and
11 (5) the recommended permanency plan including:
12 (i) a recommendation regarding whether the child's current permanency
13 goal should be continued or modified, the reasons therefor, and the
14 anticipated date for meeting the goal;
15 (ii) a recommendation regarding whether the child's placement should
16 be extended and the reasons for the recommendation;
17 (iii) any proposed changes in the child's current placement, trial
18 discharge or discharge that may occur before the next permanency hear-
19 ing;
20 (iv) a description of the steps that will be taken by the local social
21 services district or agency to continue to enable prompt delivery of
22 appropriate educational and vocational services to the child in his or
23 her current placement and during any potential change in the child's
24 foster care placement, during any trial discharge, and after discharge
25 of the child in accordance with the plans for the child's placement
26 until the next permanency hearing;
27 (v) whether any modification to the visitation plan or plans is recom-
28 ended and the reasons therefor;
29 (vi) where a child has attained the age of fourteen or will attain the
30 age of fourteen before the next permanency hearing, a description of the
31 services and assistance that will be provided to enable the child to
32 learn independent living skills;
33 (vii) where a child has been placed outside this state, whether the
34 out-of-state placement continues to be appropriate, necessary and in the
35 best interests of the child;
36 (viii) where return home of the child is not likely, the efforts that
37 will be made to evaluate or plan for another permanent plan; and
38 (ix) in the case of a child who has been freed for adoption:
39 (A) a description of services and assistance that will be provided to
40 the child and the prospective adoptive parent to expedite the adoption
41 of the child;
42 (B) information regarding the child's eligibility for adoption subsidy
43 pursuant to title nine of article six of the social services law; and
44 (C) if the child is over age fourteen and has voluntarily withheld his
45 or her consent to an adoption, the facts and circumstances regarding the
46 child's decision to withhold consent and the reasons therefor.
47 (d) Court findings and order. At the conclusion of each permanency
48 hearing, the court shall, upon the proof adduced, in accordance with the
49 best interests and safety of the child, including whether the child
50 would be at risk of abuse or neglect if returned to the parent or other
51 person legally responsible, determine and issue its findings, and enter
52 an order of disposition in writing:
53 (1) directing that the placement of the child be terminated and the
54 child returned to the parent or other person legally responsible for the
55 child's care with such further orders as the court deems appropriate; or

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1 (2) where the child is not returned to the parent or other person
2 legally responsible:

3 (i) whether the permanency goal for the child should be approved or
4 modified and the anticipated date for achieving the goal. The permanency
5 goal may be determined to be:

6 (A) return to parent;

7 (B) placement for adoption with the local social services official
8 filing a petition for termination of parental rights;

9 (C) referral for legal guardianship;

10 (D) permanent placement with a fit and willing relative; or

11 (E) placement in another planned permanent living arrangement that
12 includes a significant connection to an adult willing to be a permanency
13 resource for the child if the local social services official has docu-
14 mented to the court a compelling reason for determining that it would
15 not be in the best interests of the child to return home, be referred
16 for termination of parental rights and placed for adoption, placed with
17 a fit and willing relative, or placed with a legal guardian;

18 (ii) placing the child in the custody of a fit and willing relative or
19 other suitable person, or continuing the placement of the child until
20 the completion of the next permanency hearing, provided, however, that
21 no placement may be continued under this section beyond the child's
22 eighteenth birthday without his or her consent and in no event past the
23 child's twenty-first birthday;

24 (iii) determining whether reasonable efforts have been made to effec-
25 tuate the child's permanency plan as follows:

26 (A) unless the child is freed for adoption or there has been a deter-
27 mination by a court that such efforts are not required pursuant to
28 section one thousand thirty-nine-b of this act, whether reasonable
29 efforts have been made to eliminate the need for placement of the child
30 and to enable the child to safely return home;

31 (B) where the permanency plan is adoption, guardianship, placement
32 with a fit and willing relative or another planned permanent living
33 arrangement other than return to parent, whether reasonable efforts have
34 been made to make and finalize such alternate permanent placement;

35 (iv) where return home of the child is not likely, what efforts should
36 be made to evaluate or plan for another permanent plan;

37 (v) the steps that must be taken by the local social services official
38 or agency to implement the educational and vocational program components
39 of the permanency hearing report submitted pursuant to subdivision (c)
40 of this section, and any modifications that should be made to such plan;

41 (vi) specifying the date certain for the next scheduled permanency
42 hearing;

43 (vii) where placement of the child is extended, such order shall also
44 include:

45 (A) a description of the visitation plan or plans;

46 (B) where the child is not freed for adoption, a direction that the
47 child's parent or parents, including any non-respondent parent or other
48 person legally responsible for the child's care shall be notified of the
49 planning conference or conferences to be held pursuant to subdivision
50 three of section four hundred nine-e of the social services law and
51 notification of their right to attend such conference or conferences and
52 their right to have counsel or another representative with them;

53 (C) where the child is not freed for adoption, a direction that the
54 parent or other person legally responsible for the child's care keep the
55 local social services district or agency apprised of his or her current
56 whereabouts and a current mailing address;

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1 (D) where the child is not freed for adoption, a notice that if the
2 child remains in foster care for fifteen of the most recent twenty-two
3 months, the local social services district or agency may be required by
4 law to file a petition to terminate parental rights;

5 (E) where a child has been freed for adoption and is over age fourteen
6 and has voluntarily withheld his or her consent to an adoption, the
7 facts and circumstances with regard to the child's decision to withhold
8 consent and the reasons therefor;

9 (F) where a child has been placed outside of this state, whether the
10 out-of-state placement continues to be appropriate, necessary and in the
11 best interests of the child;

12 (G) where a child has or will before the next permanency hearing reach
13 the age of fourteen, the services and assistance necessary to assist the
14 child in learning independent living skills; and

15 (viii) any other findings or orders that the court deems appropriate,
16 which may include:

17 (A) Whether the court should issue any orders for services in the
18 manner specified in section one thousand fifteen-a of this act in order
19 to achieve the permanency plan and, if so, what services should be
20 ordered.

21 (B) Where a child has been freed for adoption, the order may also:

22 (I) direct that such child be placed for adoption in the foster family
23 home where he or she resides or has resided or with any other suitable
24 person or persons;

25 (II) direct the local social services district to provide services or
26 assistance to the child and the prospective adoptive parent authorized
27 or required to be made available pursuant to the comprehensive annual
28 services program plan then in effect. Such order shall include, where
29 appropriate, the evaluation of eligibility for adoption subsidy pursuant
30 to title nine of article six of the social services law, but shall not
31 require the provision of such subsidy. Violation of such an order shall
32 be subject to punishment pursuant to section seven hundred fifty-three
33 of the judiciary law; and

34 (III) recommend that the office of children and family services inves-
35 tigate the facts and circumstances concerning the discharge of responsi-
36 bilities for the care and welfare of such child by a local social
37 services district pursuant to section three hundred ninety-five of the
38 social services law.

39 (C) Where the permanency goal is return to parent and it is antic-
40 ipated that the child may be returned home before the next scheduled
41 permanency hearing, the court may provide the local social services
42 district with authority to discharge the child to the parent without
43 further court hearing, provided that ten days prior written notice is
44 served upon the court and law guardian.

45 (D) The court may make an order of protection in the manner specified
46 by section one thousand fifty-six of this act in assistance or as a
47 condition of any other order made under this section. The order of
48 protection may set forth reasonable conditions of behavior to be
49 observed for a specified period of time by a person before the court.

50 (E) Where the court finds reasonable cause to believe that grounds for
51 termination of parental rights exist, the court may direct the local
52 social services district or other agency to institute a proceeding to
53 legally free the child for adoption pursuant to section three hundred
54 eighty-four-b of the social services law. Upon a failure by such agency
55 to institute such proceeding within ninety days after entry of such
56 order, the court shall permit the foster parent or parents in whose home

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1 the child resides to institute such a proceeding unless the local social
2 services district or other agency, for good cause shown and upon due
3 notice to all the parties to the proceeding, has obtained a modification
4 or extension of such order, or unless the court has reasonable cause to
5 believe that such foster parent or parents would not obtain approval of
6 their petition to adopt the child in a subsequent adoption proceeding.

7 (F) The court may make an order directing a local social services
8 district or agency to undertake diligent efforts to encourage and
9 strengthen the parental relationship when it finds such efforts will not
10 be detrimental to the best interests of the child and there has been no
11 prior court finding that such efforts are not required. Such efforts
12 shall include encouraging and facilitating visitation with the child by
13 the parent or other person legally responsible for the child's care.
14 Such order may include a specific plan of action for the local social
15 services district or agency including, but not limited to, requirements
16 that such agency assist the parent or other person legally responsible
17 for the child's care in obtaining adequate housing, employment, coun-
18 seling, medical care or psychiatric treatment. Such order shall also
19 include encouraging and facilitating visitation with the child by the
20 noncustodial parent and grandparents who have the right to visitation
21 pursuant to section one thousand eighty-one of this act, and may include
22 encouraging and facilitating visitation with the child by the child's
23 siblings. Nothing in this subdivision shall be deemed to limit the
24 authority of the court to make an order pursuant to section two hundred
25 fifty-five of this act.

26 (G) Except as provided for herein, in any order issued pursuant to
27 this section, the court may require the local social services district
28 or agency to make progress reports to the court, the parties, and the
29 child's law guardian on the implementation of such order.

30 (H) Where a child freed for adoption has not been placed in a prospec-
31 tive adoptive home and the court has entered an order of disposition
32 directing that the child be placed for adoption or directing the
33 provision of services or assistance to the child and the agency charged
34 with the guardianship and custody of the child fails, prior to the next
35 scheduled permanency hearing, to comply with such order, the court at
36 the time of such hearing may, in the best interests of the child, enter
37 an order committing the guardianship and custody of the child to another
38 authorized agency or may make any other order authorized pursuant to
39 section two hundred fifty-five of this act.

40 (e) Service of court order and permanency hearing report. A copy of
41 the court order which includes the date certain for the next permanency
42 hearing and the permanency hearing report as approved, adjusted, or
43 modified by the court, shall be given to the parent or other person
44 legally responsible for the child.

45 § 1090. Representation of parties. (a) If a law guardian for the child
46 has been appointed by the family court in a proceeding pursuant to
47 section three hundred fifty-eight-a, three hundred eighty-three-c, three
48 hundred eighty-four, or three hundred eighty-four-b of the social
49 services law, or article ten of this act, the appointment of the law
50 guardian shall continue without further court order or appointment,
51 unless another appointment of a law guardian has been made by the court,
52 until the child is discharged from placement and all orders regarding
53 supervision, protection or services have expired. All notices, reports
54 and motions required by law shall be provided to such law guardian. The
55 law guardian may be relieved of his or her representation upon applica-
56 tion to the court for termination of the appointment. Upon approval of

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1 the application, the court shall immediately appoint another law guardi-
2 an to whom all notices, reports, and motions required by law shall be
3 provided.

4 (b) The appointment of an attorney for the respondent parent or
5 parents pursuant to section two hundred sixty-two of this act shall
6 continue without further order of the court. The appointment shall
7 expire upon the expiration of the time for appeal of an order of dispo-
8 sition against the respondent parent committing custody and guardianship
9 of the child pursuant to section three hundred eighty-four-b of the
10 social services law or upon final determination of any appeal or subse-
11 quent appeals authorized by law, or upon entry of an order approving a
12 surrender pursuant to the provisions of section three hundred eighty-
13 three-c of the social services law. All notices, reports and motions
14 required by law shall be served upon the attorney for the respondent
15 parent or parents. The attorney may be relieved of his or her represen-
16 tation upon application to the court for termination of the appointment.
17 If the application is approved, the court shall immediately appoint
18 another attorney for the respondent parent or parents pursuant to
19 section two hundred sixty-two of this act upon whom all notices,
20 reports, and motions required by law shall be provided.

21 § 28. Subdivision a of section 1112 of the family court act, as
22 amended by chapter 34 of the laws of 1991, is amended to read as
23 follows:

24 a. An appeal may be taken as of right from any order of disposition
25 and, in the discretion of the appropriate appellate division, from any
26 other order under this act. An appeal from an intermediate or final
27 order [~~or decision~~] in a case involving abuse or neglect may be taken as
28 of right to the appellate division of the supreme court [~~and shall have~~
29 ~~preference over all other matters~~]. Pending the determination of such
30 appeal, such order [~~or decision~~] shall be stayed where the effect of
31 such order [~~or decision~~] would be to discharge the child, if the family
32 court or the court before which such appeal is pending finds that such a
33 stay is necessary to avoid imminent risk to the child's life or health.
34 A preference in accordance with rule five thousand five hundred twenty-
35 one of the civil practice law and rules shall be afforded, without the
36 necessity of a motion, for appeals under article three; parts one and
37 two of article six; articles seven, ten, and ten-A of this act; and
38 sections three hundred fifty-eight-a, three hundred eighty-three-c,
39 three hundred eighty-four, and three hundred eighty-four-b of the social
40 services law.

41 § 29. Section 1115 of the family court act, as amended by chapter 582
42 of the laws of 1991, is amended to read as follows:

43 § 1115. Notices of appeal. [~~(a)~~] An appeal as of right shall be taken
44 by filing the original notice of appeal with the clerk of the family
45 court in which the order was made and from which the appeal is taken[~~,~~
46 ~~upon the corporation counsel of the city of New York, if the family~~
47 ~~court involved is in a county within the city of New York, upon the~~
48 ~~county attorney of the county in which the family court is located, if~~
49 ~~not within the city of New York, and upon the appellee].~~

50 [~~(b)~~] A notice of appeal shall be served on any adverse party as
51 provided for in subdivision one of section five thousand five hundred
52 fifteen of the civil practice law and rules[~~. Additionally, the~~] and
53 upon the law guardian, if any. The appellant shall file two copies of
54 such notice, together with proof of service, with the clerk of the fami-
55 ly court who shall forthwith transmit one copy of such notice to the

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1 clerk of the appropriate appellate division or as otherwise required by
2 such appellate division.

3 § 30. Section 1118 of the family court act, as added by chapter 324 of
4 the laws of 1990, is amended to read as follows:

5 § 1118. Applicability of civil practice law and rules. The provisions
6 of the civil practice law and rules apply where appropriate to appeals
7 under this article, provided, however, that the [~~fee~~] fees required by
8 section eight thousand twenty-two of the civil practice law and rules
9 shall not be required where the attorney for the appellant or attorney
10 for the movant, as applicable, certifies that [~~the~~] such appellant or
11 movant has been assigned counsel or a law guardian pursuant to section
12 two hundred forty-nine, two hundred sixty-two or eleven hundred twenty
13 of this act or section seven hundred twenty-two of the county law, or is
14 represented by a legal aid society or a [~~federally-funded~~] legal
15 services program [~~for indigents~~] or other nonprofit organization, which
16 has as its primary purpose the furnishing of legal services to indigent
17 persons, or by private counsel working on behalf of or under the
18 auspices of such society or organization. Where the attorney for the
19 appellant or the attorney for the movant certifies in accordance with
20 procedures established by the appropriate appellate division that the
21 appellant or movant has been represented in family court by assigned
22 counsel or a law guardian, pursuant to section two hundred forty-nine,
23 two hundred sixty-two or eleven hundred twenty of this act or section
24 seven hundred twenty-two of the county law, or is represented by a legal
25 aid society or legal services program or some other nonprofit organiza-
26 tion, which has as its primary purpose the furnishing of legal services
27 to indigent persons, or by private counsel working on behalf or under
28 the auspices of such society or organization, and that the appellant,
29 who has indicated an intention to appeal, or movant, continues to be
30 indigent and to be eligible for assignment of counsel, the appellant or
31 movant shall be presumed eligible for poor person relief pursuant to
32 section eleven hundred one of the civil practice law and rules and for
33 assignment of counsel on appeal without further motion. The appointment
34 of counsel and granting of poor person relief by the appellate division
35 shall continue for the purpose of filing a notice of appeal or motion
36 for leave to appeal to the court of appeals.

37 § 31. Subdivision (a) of section 1120 of the family court act, as
38 amended by chapter 476 of the laws of 1988, is amended to read as
39 follows:

40 (a) Upon an appeal in a proceeding under this act, the [~~court~~] appel-
41 late division to which such appeal is taken, or is sought to be taken,
42 shall assign counsel to any person upon a showing that such person is
43 one of the persons described in section two hundred sixty-two of this
44 act and is financially unable to obtain independent counsel or upon
45 certification by an attorney in accordance with section eleven hundred
46 eighteen of this article. The [~~court~~] appellate division to which such
47 appeal is taken, or is sought to be taken, may in its discretion assign
48 counsel to any party to the appeal. Counsel assigned under this section
49 shall be compensated and shall receive reimbursement for expenses
50 reasonably incurred in the same manner provided by section seven hundred
51 twenty-two-b of the county law. The appointment of counsel by the
52 appellate division shall continue for the purpose of filing a notice of
53 appeal or motion for leave to appeal to the court of appeals. Counsel
54 may be relieved of his or her representation upon application to the
55 court to which the appeal is taken for termination of the appointment,
56 by the court on its own motion or, in the case of a motion for leave to

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1 appeal to the court of appeals, upon application to the appellate divi-
2 sion. Upon termination of the appointment of counsel for an indigent
3 party the court shall promptly appoint another attorney.

4 § 32. Subdivisions 1, 3, 5 and 7 of section 1121 of the family court
5 act, as added by chapter 582 of the laws of 1991, are amended to read as
6 follows:

7 1. Consistent with the provisions of sections 354.2, seven hundred
8 sixty and one thousand fifty-two-b of [~~the family court~~] this act the
9 provisions of this section shall apply to appeals taken [~~in proceedings~~
10 ~~brought~~] from [~~an order~~] orders issued pursuant to articles three, seven
11 [~~and~~], ten and ten-A and [~~part~~] parts one and two of article six of this
12 act, and pursuant to sections three hundred fifty-eight-a, three hundred
13 eighty-three-c, three hundred eighty-four, and three hundred eighty-
14 four-b [~~and three hundred ninety-two~~] of the social services law.

15 3. It shall also be the duty of such counsel or law guardian to ascer-
16 tain whether the party represented by such attorney wishes to appeal
17 and, if so, to serve and file the necessary notice of appeal and, as
18 applicable, to apply for leave to appeal as a poor person, to file a
19 certification of continued indigency and continued eligibility for
20 appointment of counsel pursuant to section eleven hundred eighteen of
21 this article and such other documents as may be required by the appro-
22 priate appellate division.

23 5. Where a party wishes to appeal, it shall also be the duty of such
24 counsel or law guardian, where appropriate, to apply for[~~, when appro-~~
25 ~~priate,~~] assignment of counsel for such party pursuant to applicable
26 provisions of this act, the judiciary law and the civil practice law and
27 rules, and to file a certification of continued indigency and continued
28 eligibility for appointment of counsel pursuant to section eleven
29 hundred eighteen of this article and such other documents as may be
30 required by the appropriate appellate division.

31 7. Such transcript shall be completed within thirty days from the
32 receipt of the request of the appellant[~~, where practicable~~]. Where
33 such transcript is not completed within such time period, the court
34 reporter or director of the transcription service responsible for the
35 preparation of the transcript shall notify the administrative judge of
36 the appropriate judicial district. Such administrative judge shall
37 establish procedures to [~~assist in~~] effectuate the timely preparation of
38 such transcript. The appellate divisions may establish additional proce-
39 dures to effectuate the timely preparation of transcripts.

40 The appellate division shall establish procedures to ensure the expe-
41 ditious filing and service of the appellant's brief, the answering brief
42 and any reply brief, which may include scheduling orders. The appellant
43 shall perfect the appeal within sixty days of receipt of the transcript
44 of the proceeding appealed from or within any different time that the
45 appellate division has by rule prescribed for perfecting such appeals
46 under subdivision (c) of rule five thousand five hundred thirty of the
47 civil practice law and rules or as otherwise specified by the appellate
48 division. Such sixty day or other prescribed period may be extended by
49 [~~order of~~] the appellate division for good cause shown upon written
50 application to the appellate division showing merit to the appeal and a
51 reasonable ground for an extension of time. [~~An order~~] Upon the granting
52 of such an extension of time [may impose a schedule for the filing and
53 ~~service of the appellant's brief, the answering brief and any reply~~
54 ~~brief] the appellate division shall issue new specific deadlines by
55 which the appellant's brief, the answering brief and any reply brief
56 must be filed and served.~~

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1 § 33. Paragraph (f) of subdivision 5 of section 22 of the social
2 services law, as added by chapter 902 of the laws of 1986, is amended to
3 read as follows:

4 (f) Failure to provide adoption services or assistance to a prospec-
5 tive adoptive parent on behalf of a child freed for adoption as defined
6 in subdivision [~~one of section three hundred ninety two of this chapter~~]
7 (b) of section one thousand eighty-seven of the family court act pursu-
8 ant to section three hundred seventy-two-b of this chapter and the
9 [~~state's~~] local social services district's consolidated services plan.

10 § 34. Subdivisions 3 and 4 of section 39 of the social services law,
11 as added by chapter 462 of the laws of 1987, are amended to read as
12 follows:

13 3. Any Indian tribe designated as such by the Secretary of the Interi-
14 or which became subject to the jurisdiction of courts of the state of
15 New York pursuant to sections two hundred thirty-two and two hundred
16 thirty-three of title twenty-five of the United States code or any other
17 federal law, may reassume jurisdiction over those child custody
18 proceedings provided for in articles three, seven [~~and~~], ten, and ten-A
19 of the family court act and sections three hundred fifty-eight-a[~~7~~]
20 and three hundred eighty-four-b [~~and three hundred ninety two~~] of this
21 chapter involving Indian children provided that the Secretary of the
22 Interior has granted approval pursuant to and in accordance with the
23 applicable sections of title twenty-five of the United States code.

24 4. Any Indian tribe designated as such by the state of New York which
25 is subject to the jurisdiction of the courts of the state of New York,
26 may reassume jurisdiction over those child custody proceedings provided
27 for in articles three, seven [~~and~~], ten, and ten-A of the family court
28 act, and sections three hundred fifty-eight-a[~~7~~] and three hundred
29 eighty-four-b [~~and three hundred ninety two~~] of this chapter involving
30 Indian children provided that the local commissioner has granted
31 approval in accordance with rules and regulations established by the
32 department.

33 § 35. Subdivision 2-a of section 358-a of the social services law, as
34 added by chapter 808 of the laws of 1985, is amended to read as follows:

35 (2-a) Continuing jurisdiction. (a) The court shall possess continuing
36 jurisdiction over the parties [~~only for the purpose of: (i) monitoring~~
37 ~~compliance with an order imposing conditions pursuant to subdivision~~
38 ~~three of this section or (ii) ordering the filing of a petition, pursu-~~
39 ~~ant to section three hundred ninety two of this chapter, earlier than~~
40 ~~the date which would otherwise be required pursuant to paragraph (d) of~~
41 ~~subdivision three of such section, in which case such order shall~~
42 ~~include the court's findings supporting its determination that such~~
43 ~~order is in accordance with the best interests of the child. Continuing~~
44 ~~jurisdiction of the court pursuant to this paragraph shall terminate~~
45 ~~upon the initiation of a proceeding concerning the child pursuant to~~
46 ~~section three hundred ninety two of this chapter] until the child is
47 discharged from placement and all orders regarding supervision,
48 protection or services have expired.~~

49 (b) A foster parent or parents in whose home the child resides may
50 [~~petition~~] make a motion to the court to [~~order the filing of a peti-~~
51 ~~tion, pursuant to section three hundred ninety two of this chapter, in~~
52 ~~accordance with paragraph (a) of this subdivision] schedule a permanency
53 hearing pursuant to article ten-A of the family court act, upon a show-
54 ing of reasonable cause to believe that grounds exist to institute a
55 proceeding pursuant to paragraph (b) of subdivision four of section~~

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1 three hundred eighty-four-b of this chapter to legally free such child
2 for adoption.

3 § 36. Paragraph (a) and the closing paragraph of paragraph (b) of
4 subdivision 3 of section 358-a of the social services law, paragraph (a)
5 as amended and the closing paragraph of paragraph (b) as added by chap-
6 ter 7 of the laws of 1999, are amended to read as follows:

7 (a) If the court is satisfied that the parent, parents or guardian
8 executed such instrument knowingly and voluntarily and because he or she
9 would be unable to make adequate provision for the care, maintenance and
10 supervision of such child in his or her home, and that the requirements
11 of section three hundred eighty-four-a of this chapter, if applicable,
12 have been satisfied and that where appropriate, reasonable efforts were
13 made prior to the placement of the child into foster care to prevent or
14 eliminate the need for removal of the child from his or her home and
15 that prior to the initiation of the court proceeding required to be held
16 by subdivision one of this section, reasonable efforts were made to make
17 it possible for the child to return safely to his or her home, the court
18 may find and determine that the best ~~[interest]~~ interests and welfare of
19 the child would be promoted by removal of the child from such home, and
20 that it would be contrary to the welfare of such child for the child to
21 continue in such home, and the court shall thereupon grant the petition
22 and approve such instrument and the transfer of the custody and guardi-
23 anship or care and custody of such child to such social services offi-
24 cial in accordance therewith. If the court determines that, where appro-
25 priate, reasonable efforts were made prior to the placement of the child
26 into foster care to prevent or eliminate the need for removal of the
27 child from his or her home, that prior to the initiation of the court
28 proceeding reasonable efforts were made to make it possible for the
29 child to return safely to his or her home, or that it would be contrary
30 to the best ~~[interest]~~ interests of the child to continue in the home,
31 or that reasonable efforts to prevent or eliminate the need for removal
32 of the child from the home were not made but that the lack of such
33 efforts was appropriate under the circumstances, the court order shall
34 include such findings. Approval of such instrument in a proceeding
35 pursuant to this section shall not constitute a remand or commitment
36 pursuant to this chapter and shall not preclude challenge in any other
37 proceeding to the validity of the instrument. If the permanency plan for
38 the child is adoption, guardianship, permanent placement with a fit and
39 willing relative or ~~[some other]~~ another planned permanent living
40 arrangement other than reunification with the parent or parents of the
41 child, the court must consider and determine in its order ~~[that]~~ whether
42 reasonable efforts are being made to make and finalize such alternate
43 permanent placement.

44 If the court determines that reasonable efforts are not required
45 because of one of the grounds set forth above, a permanency hearing
46 shall be held within thirty days of the finding of the court that such
47 efforts are not required. ~~[At the permanency hearing, the court shall~~
48 ~~determine the appropriateness of the permanency plan prepared by the~~
49 ~~social services official which shall include whether and when the child:~~
50 ~~(i) will be returned to the parent; (ii) should be placed for adoption~~
51 ~~with the commissioner of social services filing a petition for termi-~~
52 ~~nation of parental rights; (iii) should be referred for legal guardian-~~
53 ~~ship; (iv) should be placed permanently with a fit and willing relative;~~
54 ~~or (v) should be placed in another planned permanent living arrangement~~
55 ~~if the commissioner of social services has documented to the court a~~
56 ~~compelling reason for determining that it would not be in the best~~

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1 ~~interest of the child to return home, be referred for termination of~~
2 ~~parental rights and placed for adoption, placed with a fit and willing~~
3 ~~relative, or placed with a legal guardian.] Such hearing shall be~~
4 ~~conducted pursuant to section one thousand eighty-nine of the family~~
5 ~~court act.~~ The local social services official shall thereafter make
6 reasonable efforts to place the child in a timely manner and to complete
7 whatever steps are necessary to finalize the permanent placement of the
8 child as set forth in the permanency plan approved by the court. If
9 reasonable efforts are determined by the court not to be required
10 because of one of the grounds set forth in this paragraph, the local
11 social services official may file a petition for termination of parental
12 rights of the parent in accordance with section three hundred eighty-
13 four-b of this chapter.

14 § 37. Paragraph (f) of subdivision 3 of section 358-a of the social
15 services law, as added by chapter 198 of the laws of 1991 and as relet-
16 tered by chapter 7 of the laws of 1999, is amended to read as follows:

17 (f) For a child who has attained the age of [~~sixteen~~ fourteen], if the
18 court grants the petition and approves an instrument executed pursuant
19 to section three hundred eighty-four or three hundred eighty-four-a of
20 this chapter and the transfer of custody and guardianship or care and
21 custody of the child to a local social services official the court shall
22 determine in its order the services and assistance needed[~~, if any,~~] to
23 assist the child [~~to make the transition from foster care to~~] in learn-
24 ing independent living skills.

25 § 38. Paragraph (c) of subdivision 4 of section 358-a of the social
26 services law is REPEALED.

27 § 39. Subdivisions 7 and 8 of section 358-a of the social services
28 law, as amended by chapter 465 of the laws of 1992, are amended to read
29 as follows:

30 (7) Return of child. If an instrument provides for the return of the
31 care and custody of a child by the local social services official to the
32 parent, parents or guardian upon any terms and conditions or at any
33 time, the local social services official shall comply with such terms of
34 such instrument without further court order. Every order approving an
35 instrument providing for the transfer of the care and custody of a child
36 to a local social services official shall be served upon the parent,
37 parents or guardian who executed such instrument in such manner as the
38 family court judge may provide in such order, together with a notice of
39 the terms and conditions under which the care and custody of such child
40 may be returned to the parent, parents or guardian. If an instrument
41 provides for the return of the care and custody of a child by the local
42 social services official to the parent, parents or guardian without
43 fixing a definite date for such return, or if the local social services
44 official shall fail to return a child to the care and custody of the
45 child's parent, parents or guardian in accordance with the terms of the
46 instrument, the parent, parents or guardian may seek such care and
47 custody by [~~petition~~ motion] for return of such child and order to show
48 cause in such proceeding or by writ of habeas corpus in the supreme
49 court. Nothing in this subdivision shall limit the requirement for a
50 [~~petition to review the foster care status of a child pursuant to~~
51 ~~section three hundred ninety-two of this chapter~~] permanency hearing
52 pursuant to article ten-A of the family court act.

53 (8) Appealable orders. Any order of a family court [~~judge~~] denying any
54 petition of a local social services official filed pursuant to this
55 section, or any order of a family court [~~judge~~] granting or denying any
56 [~~petition~~ motion] filed by a parent, parents or guardian for return of a

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1 child pursuant to this section, shall be deemed an order of disposition
2 appealable pursuant to article eleven of the family court act.

3 § 40. Subdivisions 3 and 4 of section 378 of the social services law,
4 as amended by chapter 282 of the laws of 1996, are amended to read as
5 follows:

6 3. No such license shall permit the reception for board of more than
7 six children and if there are children not received for board living in
8 the home of a person to whom such license is issued, whether children of
9 such person or otherwise, the sum of the number of such children and of
10 the number of children permitted to be received for board by such
11 license shall not exceed six, excepting, however, that such license may
12 permit the reception for board of additional children if such children
13 (a) are siblings or half-siblings, or are siblings or half-siblings of a
14 child living in the home, (b) are children freed for adoption as defined
15 in [~~paragraph (c) of subdivision one of section three hundred ninety two~~
16 ~~of this chapter~~] subdivision (b) of section one thousand eighty-seven of
17 the family court act, and have been placed for adoption with the person
18 to whom such license is issued, or (c) are minor parents who are foster
19 children and the minor parents' children.

20 4. No such certificate shall permit the reception for board of more
21 than six children and/or minors and if there are children under thirteen
22 years of age not received for board living in the home of the person to
23 whom such certificate is issued, whether children of such person or
24 otherwise, the total number of such children and of the number of chil-
25 dren and/or minors permitted to be received for board by such certifi-
26 cate shall not exceed six, excepting, however, that such certificate
27 may permit the reception for board of up to two additional children if
28 such children (a) are siblings or half-siblings, or are siblings or
29 half-siblings of a child living in the home, (b) are children freed for
30 adoption as defined in [~~paragraph (c) of subdivision one of section~~
31 ~~three hundred ninety two of this chapter~~] subdivision (b) of section one
32 thousand eighty-seven of the family court act, and have been placed for
33 adoption with the person to whom such certificate is issued, or (c) are
34 minor parents who are foster children and the minor parents' children.

35 § 41. Subdivision 2 of section 383-c of the social services law, as
36 amended by chapter 76 of the laws of 2002, is amended to read as
37 follows:

38 2. Terms. (a) Such guardianship shall be in accordance with the
39 provisions of this article and the instrument shall be upon such terms
40 and subject to such conditions as may be agreed upon by the parties
41 thereto and shall comply with subdivision five of this section;
42 provided, however, that an authorized agency shall not accept a surren-
43 der instrument conditioned upon adoption by a particular person, unless
44 such person is a certified or approved foster parent, where the perman-
45 ency plan for the child is for the child to be adopted by that person or
46 the agency has fully investigated and [~~certified or~~] approved such
47 person as [~~a-qualified~~] an adoptive parent in accordance with applicable
48 statute and regulations. No such agency shall draw or receive money
49 from public funds for the support of any such child except upon the
50 written order or permit of the social services official of the county or
51 city sought to be charged with the support of such child.

52 (b) If a surrender instrument designates a particular person or
53 persons who will adopt a child, such person or persons, the child's
54 birth parent or parents, the authorized agency having care and custody
55 of the child and the child's law guardian, may enter into a written
56 agreement providing for communication or contact between the child and

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1 the child's parent or parents on such terms and conditions as may be
2 agreed to by the parties. If a surrender instrument does not designate a
3 particular person or persons who will adopt the child, then the child's
4 birth parent or parents, the authorized agency having care and custody
5 of the child and the child's law guardian may enter into a written
6 agreement providing for communication or contact, on such terms and
7 conditions as may be agreed to by the parties. Such agreement also may
8 provide terms and conditions for communication with or contact between
9 the child and the child's biological siblings or half-siblings, if any.
10 If any such sibling or half-sibling is fourteen years of age or older,
11 such terms and conditions shall not be enforceable unless such sibling
12 or half-sibling consents to the agreement in writing. If the court
13 before which the surrender instrument is presented for approval deter-
14 mines that the agreement concerning communication and contact is in the
15 child's best interests, the court shall approve the agreement. If the
16 court does not approve the agreement, the court may nonetheless approve
17 the surrender; provided, however, that the birth parent or parents
18 executing the surrender instrument shall be given the opportunity at
19 that time to withdraw such instrument. Enforcement of any agreement
20 prior to the adoption of the child shall be in accordance with subdivi-
21 sion (b) of section one thousand fifty-five-a of the family court act.
22 Subsequent to the adoption of the child, enforcement of any agreement
23 shall be in accordance with section one hundred twelve-b of the domestic
24 relations law.

25 § 42. Paragraph (b) of subdivision 3 of section 383-c of the social
26 services law, as amended by chapter 76 of the laws of 2002, is amended
27 to read as follows:

28 (b) Before a judge or surrogate approves a judicial surrender, the
29 judge or surrogate shall order that notice of the surrender proceeding
30 be given to persons identified in subdivision two of section three
31 hundred eighty-four-c of this title and to such other persons as the
32 judge or surrogate may, in his or her discretion, prescribe. At the time
33 that a parent appears before a judge or surrogate to execute and
34 acknowledge a surrender, the judge or surrogate shall inform such parent
35 of the right to be represented by legal counsel of the parent's own
36 choosing and of the right to obtain supportive counseling and of any
37 right to have counsel assigned pursuant to section two hundred sixty-two
38 of the family court act, section four hundred seven of the surrogate's
39 court procedure act, or section thirty-five of the judiciary law. The
40 judge or surrogate also shall inform the parent of the consequences of
41 such surrender, including informing such parent that the parent is
42 giving up all rights to have custody, visit with, speak with, write to
43 or learn about the child, forever, unless the parties have agreed to
44 different terms pursuant to subdivision two of this section, or, if the
45 parent registers with the adoption information register, as specified in
46 section forty-one hundred thirty-eight-d of the public health law, that
47 the parent may be contacted at any time after the child reaches the age
48 of eighteen years, but only if both the parent and the adult child so
49 choose. The court shall determine whether the terms and conditions
50 agreed to by the parties pursuant to subdivision two of this section are
51 in the child's best interests before approving the surrender. The judge
52 or surrogate shall inform the parent that where a surrender containing
53 conditions has been executed, the parent is obligated to provide the
54 authorized agency with a designated mailing address, as well as any
55 subsequent changes in such address, at which the parent may receive
56 notices regarding any substantial failure of a material condition,

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1 unless such notification is expressly waived by a statement written by
2 the parent and appended to or included in such instrument. The judge or
3 surrogate also shall inform the parent that the surrender shall become
4 final and irrevocable immediately upon its execution and acknowledgment.
5 The judge or surrogate shall give the parent a copy of such surrender
6 upon the execution thereof.

7 § 43. The opening paragraph and subparagraph (ii) of paragraph (c) of
8 subdivision 5 of section 383-c of the social services law, as amended by
9 chapter 76 of the laws of 2002, are amended to read as follows:

10 A surrender instrument for a judicial surrender also shall state in
11 plain language in conspicuous bold print [~~on the first page~~] at the
12 beginning thereof that the surrender becomes final and irrevocable imme-
13 diately upon execution and acknowledgement, and that the parent cannot
14 bring a case in court to revoke the surrender or to regain custody of
15 the child. Where the parties have agreed that the surrender shall be
16 subject to conditions pursuant to subdivision two of this section, the
17 instrument shall further state in plain language that:

18 (ii) except for good cause shown, the authorized agency shall file a
19 petition on notice to the parent unless notice is expressly waived by a
20 statement written by the parent and appended to or included in such
21 instrument and law guardian in accordance with section one thousand
22 fifty-five-a of the family court act within thirty days of such failure,
23 in order for the court to review such failure and, where necessary, to
24 hold a hearing; provided, however, that, in the absence of such filing,
25 the parent and/or law guardian for the child may file such a petition at
26 any time up to sixty days after notification of the failure. Such peti-
27 tion filed by a parent or law guardian must be filed prior to the
28 adoption of the child; and

29 § 44. The opening paragraph of paragraph (d) and clause (B) of subpar-
30 agraph (iii) of paragraph (d) of subdivision 5 of section 383-c of the
31 social services law, the opening paragraph as added by chapter 479 of
32 the laws of 1990 and clause (B) of subparagraph (iii) as amended by
33 chapter 76 of the laws of 2002, are amended to read as follows:

34 An extra-judicial surrender instrument also shall state in plain
35 language in conspicuous bold print [~~on the first page~~] at the beginning
36 thereof that:

37 (B) except for good cause shown, the authorized agency shall file a
38 petition on notice to the parent unless notice is expressly waived by a
39 statement written by the parent and appended to or included in such
40 instrument and law guardian in accordance with section [~~three hundred~~
41 ~~ninety-two of this title or section~~] one thousand fifty-five-a of the
42 family court act[~~, as applicable,~~] within thirty days of such failure in
43 order for the court to review such failure and, where necessary, to hold
44 a hearing; provided, however, that, in the absence of such filing, the
45 parent and/or law guardian for the child may file such a petition at any
46 time up to sixty days after notification of the failure. Such petition
47 filed by a parent or law guardian must by filed prior to the adoption of
48 the child; and

49 § 45. Subdivision 5 of section 383-c of the social services law is
50 amended by adding a new paragraph (g) to read as follows:

51 (g) Upon execution of a surrender instrument, the parent executing the
52 surrender shall provide information to the extent known regarding the
53 other parent, any person to whom the surrendering parent had been
54 married at the time of the conception or birth of the child and any
55 other person who would be entitled to notice of a proceeding to termi-
56 nate parental rights pursuant to section three hundred eighty-four-c of

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1 this title. Such information shall include, but not be limited to, such
2 parent's or person's name, last-known address, social security number,
3 employer's address and any other identifying information. Any informa-
4 tion provided pursuant to this paragraph shall be recorded in the
5 uniform case record maintained pursuant to section four hundred nine-f
6 of this article; provided, however, that the failure to provide such
7 information shall not invalidate the surrender.

8 § 46. Paragraph (c) of subdivision 6 of section 383-c of the social
9 services law, as amended by chapter 76 of the laws of 2002, is amended
10 to read as follows:

11 (c) In any case in which the authorized agency determines that the
12 persons specified in the surrender will not adopt the child or in any
13 other case of a substantial failure of a material condition prior to the
14 finalization of the adoption of the child, the agency promptly shall
15 notify the parent thereof, unless such notice is expressly waived by a
16 statement written by the parent and appended to or included in such
17 instrument, and shall notify the court and the law guardian for the
18 child within twenty days. In any such case, the authorized agency shall
19 file a petition on notice to the parent unless notice is expressly
20 waived by a statement written by the parent and appended to or included
21 in such instrument and law guardian in accordance with section [~~three~~
22 ~~hundred ninety two of this title or section~~] one thousand fifty-five-a
23 of the family court act, as applicable, within thirty days, except for
24 good cause shown, in order for the court to review such failure and,
25 where necessary, to hold a hearing; provided, however, that, in the
26 absence of such a filing, the parent and/or law guardian for the child
27 may file such a petition at any time up to sixty days after the notifi-
28 cation of the failure. Such petition filed by a parent or law guardian
29 must be filed prior to the adoption. Nothing in this paragraph shall
30 limit the rights and remedies, if any, available to the parties and the
31 law guardian with respect to a failure to comply with a material condi-
32 tion of a surrender subsequent to the finalization of the adoption of
33 the child.

34 § 47. Paragraph b of subdivision 10 of section 383-c of the social
35 services law, as added by chapter 663 of the laws of 2002, is amended to
36 read as follows:

37 b. Upon acceptance of a judicial surrender or approval of an extra-ju-
38 dicial surrender pursuant to subdivision three or four of this section,
39 the court shall schedule [~~a~~] an initial freed child permanency hearing
40 pursuant to section one thousand [~~fifty five a~~] eighty-nine of the fami-
41 ly court act [~~to be conducted immediately, but in no event to be~~
42 ~~completed later than sixty days after the earlier of the court's state-~~
43 ~~ment of its acceptance or approval on the record or issuance of its~~
44 ~~written order accepting or approving the surrender. A notice of the~~
45 ~~permanency hearing and a petition and/or report, as directed by the~~
46 ~~court, shall be filed and provided to parties, law guardian and individ-~~
47 ~~uals required to be notified in the manner and according to the schedule~~
48 ~~specified by the court]. Subsequent permanency [~~petitions shall be filed~~
49 ~~pursuant to section one thousand fifty five a of the family court act no~~
50 ~~later than six months after completion of the last permanency hearing,~~
51 ~~unless the court directs an earlier filing, and each subsequent perman-~~
52 ~~ency hearing shall be completed within sixty days of the filing of the~~
53 ~~petition] hearings shall be held pursuant to section one thousand eight-
54 y-nine of the family court act.~~~~

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1 § 48. Subdivision 2 of section 384 of the social services law, as
2 amended by chapter 76 of the laws of 2002, is amended to read as
3 follows:

4 2. Terms. (a) Such guardianship shall be in accordance with the
5 provisions of this article and the instrument shall be upon such terms
6 and subject to such conditions as may be agreed upon by the parties
7 thereto. The instrument shall recite that the authorized agency is
8 thereby authorized and empowered to consent to the adoption of such
9 child in the place and stead of the person signing the instrument, and
10 may recite that the person signing the instrument waives any notice of
11 such adoption; provided, however, that an authorized agency shall not
12 accept a surrender instrument conditioned upon adoption by a particular
13 person, unless the agency has fully investigated and certified or
14 approved such person as a qualified adoptive parent. No such agency
15 shall draw or receive money from public funds for the support of any
16 such child except upon the written order or permit of the local social
17 services official of the county or city sought to be charged with the
18 support of such child.

19 (b) If a surrender instrument designates a particular person or
20 persons who will adopt a child, such person or persons, the child's
21 birth parent or parents, the authorized agency having care and custody
22 of the child and the child's law guardian, may enter into a written
23 agreement providing for communication or contact between the child and
24 the child's parent or parents on such terms and conditions as may be
25 agreed to by the parties. If a surrender instrument does not designate a
26 particular person or persons who will adopt the child, then the child's
27 birth parent or parents, the authorized agency having care and custody
28 of the child and the child's law guardian may enter into a written
29 agreement providing for communication or contact, on such terms and
30 conditions as may be agreed to by the parties. Such agreement also may
31 provide terms and conditions for communication with or contact between
32 the child and the child's biological sibling or half-sibling, if any. If
33 any such sibling or half-sibling is fourteen years of age or older, such
34 terms and conditions shall not be enforceable unless such sibling or
35 half-sibling consents to the agreement in writing. If the court before
36 which the surrender instrument is presented for approval determines that
37 the agreement concerning communication and contact is in the child's
38 best interests, the court shall approve the agreement. If the court does
39 not approve the agreement, the court may nonetheless approve the surren-
40 der; provided, however, that the birth parent or parents executing the
41 surrender instrument shall be given the opportunity at that time to
42 withdraw such instrument. Enforcement of any agreement prior to the
43 adoption of the child shall be in accordance with subdivision (b) of
44 section one thousand fifty-five-a of the family court act. Subsequent
45 to the adoption of the child, enforcement of any agreement shall be in
46 accordance with section one hundred twelve-b of the domestic relations
47 law.

48 § 49. Subparagraph (ii) of the closing paragraph of subdivision 3 of
49 section 384 of the social services law, as added by chapter 76 of the
50 laws of 2002, is amended to read as follows:

51 (ii) except for good cause shown, the authorized agency shall file a
52 petition on notice to the parent unless notice is expressly waived by a
53 statement written by the parent and appended to or included in such
54 instrument and law guardian in accordance with section [~~three hundred~~
55 ~~ninety two of this title~~] one thousand fifty-five-a of the family court
56 act within thirty days of such failure, in order for the court to review

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1 such failure and, where necessary, to hold a hearing; provided, however,
2 that, in the absence of such filing, the parent and/or law guardian for
3 the child may file such a petition at any time up to sixty days after
4 notification of such failure. Such petition filed by a parent or law
5 guardian must be filed prior to the adoption of the child; and

6 § 50. The closing paragraph of subdivision 5 of section 384 of the
7 social services law, as added by chapter 76 of the laws of 2002, is
8 amended to read as follows:

9 Where the parties have agreed that the surrender shall be subject to
10 conditions pursuant to subdivision two of this section and where there
11 has been a substantial failure of a material condition prior to the
12 finalization of the adoption of the child, the agency shall notify the
13 parent thereof, unless such notice is expressly waived by a statement
14 written by the parent and appended to or included in such instrument,
15 and shall notify the court and the law guardian for the child within
16 twenty days of such failure. In any such case, the authorized agency
17 shall file a petition on notice to the parent unless notice is expressly
18 waived by a statement written by the parent and appended to or included
19 in such instrument and law guardian in accordance with section [~~three~~
20 ~~hundred ninety-two of this title~~] one thousand fifty-five-a of the fami-
21 ly court act within thirty days of such failure, except for good cause
22 shown, in order for the court to review such failure and, where neces-
23 sary, to hold a hearing; provided, however, that, in the absence of such
24 a filing, the parent and/or law guardian for the child may file such a
25 petition at any time up to sixty days after notification of the failure.
26 Such a petition filed by a parent or law guardian must be filed prior to
27 the adoption. Nothing in this paragraph shall limit the rights and reme-
28 dies[~~, if any,~~] available to the parties and the law guardian pursuant
29 to section one hundred twelve-b of the domestic relations law with
30 respect to a failure to comply with a material condition of a surrender
31 subsequent to the finalization of the adoption of [~~the~~] a child.

32 § 51. Subdivision 7 of section 384 of the social services law, as
33 added by chapter 663 of the laws of 2002, is amended and a new subdivi-
34 sion 8 is added to read as follows:

35 7. Upon acceptance of a judicial surrender or approval of an extra-ju-
36 dicial surrender pursuant to this section, the court shall schedule [~~a~~]
37 an initial freed child permanency hearing pursuant to section one thou-
38 sand [~~fifty five a of the family court act to be conducted immediately,~~
39 ~~but in no event to be completed later than sixty days after, the earlier~~
40 ~~of the court's statement of its acceptance or approval on the record or~~
41 ~~issuance of its written order accepting or approving the surrender. A~~
42 ~~notice of the permanency hearing and a petition and/or report, as~~
43 ~~directed by the court, shall be filed and provided to parties, law guar-~~
44 ~~dian and individuals required to be notified in the manner and according~~
45 ~~to the schedule specified by the court. Subsequent permanency petitions~~
46 ~~shall be filed pursuant to section one thousand fifty five a of the~~
47 ~~family court act no later than six months after completion of the last~~
48 ~~permanency hearing, unless the court directs an earlier filing, and each~~
49 ~~subsequent permanency hearing shall be completed within sixty days of~~
50 ~~the filing of the petition] eighty-nine of the family court act.~~

51 8. Upon execution of a surrender instrument, the parent executing the
52 surrender shall provide information to the extent known regarding the
53 other parent, any person to whom the surrendering parent had been
54 married at the time of the conception or birth of the child and any
55 other person who would be entitled to notice of a proceeding to termi-
56 nate parental rights pursuant to section three hundred eighty-four-c of

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1 this title. Such information shall include, but not be limited to, such
2 parent's or person's name, last-known address, social security number,
3 employer's address and any other identifying information. Any informa-
4 tion provided pursuant to this subdivision shall be recorded in the
5 uniform case record maintained pursuant to section four hundred nine-f
6 of this article; provided, however, that the failure to provide such
7 information shall not invalidate the surrender.

8 § 52. Subdivision 1 of section 384-a of the social services law, as
9 separately amended by chapters 666 and 669 of the laws of 1976, is
10 amended to read as follows:

11 1. Method. The care and custody of a child may be transferred by a
12 parent or guardian, and the care of a child may be transferred by any
13 person to whom a parent has entrusted the care of the child, to an
14 authorized agency by a written instrument in accordance with the
15 provisions of this section. Such transfer by a person who is not the
16 child's parent or guardian shall not affect the rights or obligations of
17 the parents or guardian, and such transfer shall be deemed a transfer of
18 the care and custody of the child for the purposes of [~~sections~~] section
19 three hundred fifty-eight-a [~~and three hundred ninety-two~~] of this chap-
20 ter.

21 § 53. Section 384-a of the social services law is amended by adding a
22 new subdivision 1-b to read as follows:

23 1-b. Upon accepting the transfer of care and custody of a child from
24 the parent, guardian or other person to whom care of the child has been
25 entrusted, a local social services official shall obtain information to
26 the extent known from such person regarding the other parent, any person
27 to whom the parent transferring care and custody had been married at the
28 time of the conception or birth of the child and any other person who
29 would be entitled to notice of a proceeding to terminate parental rights
30 pursuant to section three hundred eighty-four-c of this title. Such
31 information shall include, but not be limited to, such parent's or
32 person's name, last-known address, social security number, employer's
33 address and any other identifying information. Any information provided
34 pursuant to this subdivision shall be recorded in the uniform case
35 record maintained pursuant to section four hundred nine-f of this arti-
36 cle; provided, however, that the failure to provide such information
37 shall not invalidate the transfer of care and custody.

38 § 54. Paragraph (a) and subparagraph (iii) of paragraph (h) of subdi-
39 vision 2 of section 384-a of the social services law, paragraph (a) as
40 amended by chapter 28 of the laws of 1980, subparagraph (iii) of para-
41 graph (h) as added by chapter 477 of the laws of 2000, are amended to
42 read as follows:

43 (a) The instrument shall be upon such terms, for such time and subject
44 to such conditions as may be agreed upon by the parties thereto. The
45 [~~department~~] office of children and family services may promulgate
46 suggested terms and conditions for inclusion in such instruments, but
47 shall not require that any particular terms and conditions be included.
48 If the instrument provides that the child is to be returned by the
49 authorized agency on a date certain or upon the occurrence of an iden-
50 tifiable event, such agency shall return such child at such time unless
51 such action would be contrary to court order entered at any time prior
52 to such date or event or within ten days thereafter pursuant to section
53 three hundred eighty-four-b of this title or [~~section three hundred~~
54 ~~ninety-two of this chapter or~~] article six [~~or article~~], ten, or ten-A
55 of the family court act or unless and so long as the parent or guardian
56 is unavailable or incapacitated to receive the child. The parent or

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1 guardian may, upon written notice to such agency, request return of the
2 child at any time prior to the identified date or event, whereupon such
3 agency may, without court order, return the child or, within ten days
4 after such request, may notify the parent or guardian that such request
5 is denied. If such agency denies or fails to act upon such request, the
6 parent or guardian may seek return of the care and custody of the child
7 by ~~petition~~ motion in family court for return of such child and order
8 to show cause, or by writ of habeas corpus in the supreme court or fami-
9 ly court. If the instrument fails to specify a date or identifiable
10 event upon which such agency shall return such child, such agency shall
11 return the child within twenty days after having received notice that
12 the parent or guardian wishes the child returned, unless such action
13 would be contrary to court order entered at any time prior to the expi-
14 ration of such twenty day period pursuant to section three hundred
15 eighty-four-b of this title or ~~[section three hundred ninety two of this~~
16 ~~chapter or]~~ article six [or article], ten, or ten-A of the family court
17 act. Expenditures by a local social services district for the care and
18 maintenance of a child who has been continued in the care of an author-
19 ized agency in violation of the provisions of this subdivision shall not
20 be subject to state reimbursement.

21 (iii) A local social services official who accepts or proposes to
22 accept the care and custody of a child by means of a written instrument
23 executed pursuant to this paragraph, shall, pursuant to section three
24 hundred fifty-eight-a of this chapter, petition the family court [~~judge~~
25 of the county or city in which the local social services official has
26 his or her office to approve such written instrument. A written instru-
27 ment executed pursuant to this paragraph and approved pursuant to
28 section three hundred fifty-eight-a of this chapter shall be in effect
29 ~~[for a period of twelve months unless the court sets a shorter period]~~
30 until the court reviews the child's placement pursuant to article ten-A
31 of the family court act. The status of a child subject to such an
32 instrument shall be reviewed by the court pursuant to ~~[section three~~
33 ~~hundred fifty eight a of this chapter]~~ article ten-A of the family court
34 act.

35 § 55. Paragraphs (a), (b) and (e) of subdivision 3 of section 384-b of
36 the social services law, paragraphs (a) and (b) as amended by chapter
37 601 of the laws of 1994 and paragraph (e) as amended by chapter 605 of
38 the laws of 1990, are amended to read as follows:

39 (a) The guardianship of the person and the custody of a destitute or
40 dependent child may be committed to an authorized agency, or to a foster
41 parent authorized pursuant to section ~~[three hundred ninety two of this~~
42 ~~chapter or to section one thousand fifty five]~~ one thousand eighty-nine
43 of the family court act to institute a proceeding under this section, or
44 to a relative with care and custody of the child, by order of a surro-
45 gate or judge of the family court, as hereinafter provided. Where such
46 guardianship and custody is committed to a foster parent or to a rela-
47 tive with care and custody of the child, the family court or surrogate's
48 court shall retain continuing jurisdiction over the parties and the
49 child and may, upon its own motion or the motion of any party, revoke,
50 modify or extend its order, if the foster parent or relative fails to
51 institute a proceeding for the adoption of the child within six months
52 after the entry of the order committing the guardianship and custody of
53 the child to such foster parent or relative. Where the foster parent or
54 relative institutes a proceeding for the adoption of the child and the
55 adoption petition is finally denied or dismissed, the court which
56 committed the guardianship and custody of the child to the foster parent

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1 or relative shall revoke the order of commitment. Where the court
2 revokes an order committing the guardianship and custody of a child to a
3 foster parent or relative, it shall commit the guardianship and custody
4 of the child to an authorized agency.

5 (b) A proceeding under this section may be originated by an authorized
6 agency or by a foster parent authorized to do so pursuant to section
7 [~~three hundred ninety two of this chapter or to section one thousand~~
8 ~~fifty five~~] one thousand eighty-nine of the family court act or by a
9 relative with care and custody of the child or, if an authorized agency
10 ordered by the court to originate a proceeding under this section fails
11 to do so within the time fixed by the court, by a law guardian or guard-
12 ian ad litem of the child on the court's direction.

13 (e) A proceeding under this section is originated by a petition on
14 notice served upon the child's parent or parents, the attorney for the
15 child's parent or parents and upon such other persons as the [~~surrogate~~
16 ~~or judge~~] court may in [~~his~~] its discretion prescribe. Such notice shall
17 inform the parents and such other persons that the proceeding may result
18 in an order freeing the child for adoption without the consent of or
19 notice to the parents or such other persons. Such notice also shall
20 inform the parents and such other persons of their right to the assist-
21 ance of counsel, including any right they may have to have counsel
22 assigned by the court in any case where they are financially unable to
23 obtain counsel. The petition shall set forth the names and last known
24 addresses of all persons required to be given notice of the proceeding,
25 pursuant to this section and section three hundred eighty-four-c of this
26 title, and there shall be shown by the petition or by affidavit or other
27 proof satisfactory to the court that there are no persons other than
28 those set forth in the petition who are entitled to notice pursuant to
29 the provisions of this section or of section three hundred eighty-four-c
30 of this title. When the proceeding is initiated in family court service
31 of the petition and other process shall be made in accordance with the
32 provisions of section six hundred seventeen of the family court act, and
33 when the proceeding is initiated in surrogate's court, service shall be
34 made in accordance with the provisions of section three hundred seven of
35 the surrogate's court procedure act. When the proceeding is initiated on
36 the grounds of abandonment of a child less than one year of age at the
37 time of the transfer of the care and custody of such child to a local
38 social services official, the court shall take judicial notice of
39 efforts to locate the child's parents or other known relatives or other
40 persons legally responsible pursuant to paragraph [~~(vi)~~] (ii) of subdi-
41 vision (b) of section [~~ten hundred fifty five~~] one thousand fifty-five
42 of the family court act.

43 § 56. Paragraph (e) of subdivision 4 of section 384-b of the social
44 services law, as amended by chapter 7 of the laws of 1999, is amended to
45 read as follows:

46 (e) The parent or parents, whose consent to the adoption of the child
47 would otherwise be required in accordance with section one hundred elev-
48 en of the domestic relations law, severely or repeatedly abused such
49 child[~~, and, except as provided for herein, the child has been in the~~
50 ~~care of an authorized agency for the period of one year immediately~~
51 ~~prior to the initiation of the proceeding under this section~~]. Where a
52 court has determined that reasonable efforts to reunite the child with
53 his or her parent are not required, pursuant to the family court act or
54 this chapter, a petition to terminate parental rights on the ground of
55 severe abuse as set forth in subparagraph (iii) of paragraph (a) of
56 subdivision eight of this section may be filed immediately upon such

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1 determination[~~, provided, however, that the fact finding hearing on such~~
2 ~~petition shall commence no sooner than one year from the date the child~~
3 ~~first entered care and the court shall consider at such hearing the~~
4 ~~actions by the parent during the entire period prior to the hearing].~~

5 § 57. Paragraph (a) of subdivision 7 of section 384-b of the social
6 services law, as amended by chapter 145 of the laws of 2000, is amended
7 to read as follows:

8 (a) For the purposes of this section, "permanently neglected child"
9 shall mean a child who is in the care of an authorized agency and whose
10 parent or custodian has failed for a period of [~~more than~~] either at
11 least one year or fifteen out of the most recent twenty-two months
12 following the date such child came into the care of an authorized agency
13 substantially and continuously or repeatedly to maintain contact with or
14 plan for the future of the child, although physically and financially
15 able to do so, notwithstanding the agency's diligent efforts to encour-
16 age and strengthen the parental relationship when such efforts will not
17 be detrimental to the best interests of the child. Where a court has
18 previously determined in accordance with paragraph (b) of subdivision
19 three of section three hundred fifty-eight-a [~~and subdivision six a of~~
20 ~~section three hundred ninety two~~] one thousand thirty-nine-b of this chapter or section [~~ten~~
21 ~~hundred thirty nine b~~] one thousand thirty-nine-b, subparagraph (A) of
22 paragraph (i) of subdivision (b) of section [~~ten hundred fifty two~~] one
23 thousand fifty-two, paragraph (b) of subdivision two of section seven
24 hundred fifty-four or paragraph (c) of subdivision two of section 352.2
25 of the family court act that reasonable efforts to make it possible for
26 the child to return safely to his or her home are not required, the
27 agency shall not be required to demonstrate diligent efforts as defined
28 in this section. In the event that the parent defaults after due notice
29 of a proceeding to determine such neglect, such physical and financial
30 ability of such parent may be presumed by the court.

31 § 58. Paragraph (f) of subdivision 8 and subdivision 9 of section
32 384-b of the social services law, as amended by chapter 663 of the laws
33 of 2002, are amended to read as follows:

34 (f) Upon a finding pursuant to paragraph (a) or (b) of this subdivi-
35 sion that the child has been severely or repeatedly abused by his or her
36 parent, the court shall enter an order of disposition either (i) commit-
37 ting the guardianship and custody of the child, pursuant to this
38 section, or (ii) suspending judgment in accordance with section six
39 hundred thirty-three of the family court act, upon a further finding,
40 based on clear and convincing, competent, material and relevant evidence
41 introduced in a dispositional hearing, that the best interests of the
42 child require such commitment or suspension of judgment. Where the
43 disposition ordered is the commitment of guardianship and custody pursu-
44 ant to this section, [~~a~~] an initial freed child permanency hearing shall
45 be completed pursuant to section one thousand [~~fifty five a of the fami-~~
46 ~~ly court act immediately following, but in no event later than sixty~~
47 ~~days after, the earlier of the court's statement of its order on the~~
48 ~~record or issuance of its written order. A notice of the permanency~~
49 ~~hearing and a petition and/or report, as directed by the court, shall be~~
50 ~~filed and provided to parties, law guardian and individuals required to~~
51 ~~be notified in the manner and according to the schedule specified by the~~
52 ~~court. Subsequent permanency petitions shall be filed pursuant to~~
53 ~~section one thousand fifty five a of the family court act no later than~~
54 ~~six months after completion of the last permanency hearing, unless the~~
55 ~~court directs an earlier filing, and each subsequent permanency hearing~~

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1 ~~shall be completed within sixty days of the filing of the petition]~~
2 eighty-nine of the family court act.

3 9. Nothing in this section shall be construed to terminate, upon
4 commitment of the guardianship and custody of a child to an authorized
5 agency or foster parent, any rights and benefits, including but not
6 limited to rights relating to inheritance, succession, social security,
7 insurance and wrongful death action claims, possessed by or available to
8 the child pursuant to any other provision of law. Notwithstanding any
9 other provision of law, a child committed to the custody and guardian-
10 ship of an authorized agency pursuant to this section shall be deemed to
11 continue in foster care until such time as an adoption or [~~other~~] anoth-
12 er planned permanent living arrangement is finalized. Where the disposi-
13 tion ordered is the commitment of guardianship and custody pursuant to
14 this section, [~~a~~] an initial freed child permanency hearing shall be
15 [~~completed~~] held pursuant to section one thousand [~~fifty five a of the~~
16 ~~family court act immediately following, but in no event later than sixty~~
17 ~~days after, the earlier of the court's statement of its order on the~~
18 ~~record or issuance of its written order. A notice of the permanency~~
19 ~~hearing and a petition and/or report, as directed by the court, shall be~~
20 ~~filed and provided to parties, law guardian and individuals required to~~
21 ~~be notified in the manner and according to the schedule specified by the~~
22 ~~court. Subsequent permanency petitions shall be filed pursuant to~~
23 ~~section one thousand fifty five a of the family court act no later than~~
24 ~~six months after completion of the last permanency hearing, unless the~~
25 ~~court directs an earlier filing, and each subsequent permanency hearing~~
26 ~~shall be completed within sixty days of the filing of the petition]~~
27 eighty-nine of the family court act.

28 § 59. Section 392 of the social services law is REPEALED.

29 § 60. The opening paragraphs of subdivisions 1 and 2 and subdivision 3
30 of section 409-e of the social services law, as amended by chapter 725
31 of the laws of 1992, are amended to read as follows:

32 With respect to each child who is identified by a local social
33 services district as being considered for placement in foster care as
34 defined in section [~~three hundred ninety two of this chapter, and each~~
35 ~~child placed in such care]~~ one thousand eighty-seven of the family court
36 act by a social services district, such district, within thirty days
37 from the date of such identification [~~or of such placement, whichever~~
38 ~~occurs first~~], shall perform an assessment of the child and his or her
39 family circumstances[~~r~~]. Where a child has been removed from his or her
40 home, within thirty days of such removal the local social services
41 district shall perform an assessment of the child and his or her family
42 circumstances, or update any assessment performed when the child was
43 considered for placement. Any assessment shall be in accordance with
44 such uniform procedures and criteria as the [~~department~~] office of chil-
45 dren and family services shall by regulation prescribe. Such assessment
46 shall include the following:

47 Upon completion of [~~the~~] any assessment provided for in subdivision
48 one of this section, and not later than thirty days after a child is
49 removed from his or her home, the local social services district shall
50 establish or update and maintain a family service plan based on [~~such~~]
51 the assessment required by subdivision one of this section. The plan
52 shall be prepared in consultation with the child's parent or guardian,
53 unless such person is unavailable or unwilling to participate, or such
54 participation would be harmful to the child, and with the child if the
55 child is in foster care and is ten years of age or older, and, where
56 appropriate, with the child's siblings. Such consultation shall be done

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1 in person, unless such a meeting is impracticable or would be harmful to
2 the child. The plan shall include at least the following:

3 3. The plan shall be reviewed and revised, in accordance with the
4 procedures and standards in subdivision two of this section, at least
5 within the first ninety days following ~~[its preparation]~~ the date the
6 child was first considered for placement in foster care, and, if the
7 child has been removed from his or her home, within the first ninety
8 days following the date of removal. The plan shall be further reviewed
9 and revised not later than one hundred twenty days from this initial
10 review and at least every six months thereafter. Such revisions shall
11 indicate the types, dates and sources of services that have actually
12 been provided and an evaluation of the efficacy of such services, and
13 any necessary or desirable revisions in goals or planned services. The
14 review and revision of the plan shall be prepared in consultation with
15 the child's parent or guardian, unless such person is unavailable or
16 unwilling to participate, or such participation would be harmful to the
17 child, and with the child if the child is in foster care and is ten
18 years of age or older, and, where appropriate, with the child's
19 siblings. Such consultation shall be done in person, unless such a meet-
20 ing is impracticable or would be harmful to the child.

21 § 61. Subdivision 2 and paragraph (c) of subdivision 10 of section 442
22 of the social services law, as amended by chapter 350 of the laws of
23 1982, are amended to read as follows:

24 2. The service shall be implemented with respect to all children under
25 the age of twenty-one years for whom an authorized agency is providing
26 foster care as defined in subdivision (c) of section ~~[three hundred~~
27 ~~ninety-two of this chapter]~~ one thousand eighty-seven of the family
28 court act and for whom an application is pending to an authorized agency
29 for foster care.

30 (c) compile and maintain information on actions taken by local social
31 services districts to initiate judicial proceedings as provided by
32 ~~[sections]~~ section three hundred fifty-eight-a ~~[and three hundred nine-~~
33 ~~ty-two]~~ of this chapter and to comply with judicial orders made pursuant
34 to section ~~[three hundred ninety-two of this chapter or to section ten~~
35 ~~hundred fifty-five]~~ one thousand eighty-nine of the family court act, to
36 refer legally free children to the state adoption service pursuant to
37 section three hundred seventy-two-c of this chapter, and to comply with
38 the provisions of section four hundred nine-e of this ~~[chapter]~~ article
39 and the regulations of the ~~[department]~~ office of children and family
40 services promulgated thereunder; and

41 § 62. Subdivisions 1 and 2 of section 112 of the education law, as
42 amended by chapter 181 of the laws of 2000, are amended to read as
43 follows:

44 1. The department shall establish and enforce standards of instruc-
45 tion, personnel qualifications and other requirements for education
46 services or programs, as determined by rules of the regents and regu-
47 lations of the commissioner, with respect to the individual requirements
48 of children who are in full-time residential care in facilities or homes
49 operated or supervised by any state department or agency or political
50 subdivision. The department shall cooperate with the office of children
51 and family services, the department of mental hygiene and local depart-
52 ments of social services with respect to educational and vocational
53 training programs for children placed with, committed to or under the
54 supervision of such agencies. The department shall promulgate regu-
55 lations requiring the cooperation of local school districts in facili-
56 tating the prompt enrollment of children who are released or condi-

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1 tionally released from residential facilities operated by or under
2 contract with the office of children and family services, the department
3 of mental hygiene and local departments of social services and in imple-
4 menting plans for release or conditional release submitted to the family
5 court pursuant to paragraph (c) of subdivision seven of section 353.3 of
6 the family court act and the educational components of permanency hear-
7 ing reports submitted pursuant to section one thousand eighty-nine of
8 the family court act. Such regulations regarding the educational compo-
9 ponents of permanency hearing reports submitted pursuant to section one
10 thousand eighty-nine of the family court act shall be developed in
11 conjunction with the office of children and family services. Nothing
12 herein contained shall be deemed to apply to responsibility for the
13 provision or payment of care, maintenance or other services subject to
14 the provisions of the executive law, mental hygiene law, social services
15 law or any other law.

16 2. The commissioner shall prepare a report and submit it to the gover-
17 nor, the speaker of the assembly and the temporary president of the
18 senate by December thirty-first, nineteen hundred ninety-six and on
19 December thirty-first of each successive year. Such report shall
20 contain, for each facility operated by or under contract with the office
21 of children and family services that provides educational programs, an
22 assessment of each facility's compliance with the rules of the board of
23 regents, the regulations of the commissioner, and this chapter. Such
24 report shall include, but not be limited to: the number of youth receiv-
25 ing services under article eighty-nine of this chapter; the office's
26 activities undertaken as required by subdivisions one, two, four and
27 eight of section forty-four hundred three of this chapter; the number of
28 youth receiving bilingual education services; the number of youth eligi-
29 ble to receive limited English proficient services; interviews with
30 facility residents conducted during site visits; library services; the
31 ratio of teachers to students; the curriculum; the length of stay of
32 each youth and the number of hours of instruction provided; instruc-
33 tional technology utilized; the educational services provided following
34 the release and conditional release of the youth, including, but not
35 limited to, the implementation of requirements for the enrollment of
36 such youth in school contained in plans for release and conditional
37 release submitted to the family court pursuant to paragraph (c) of
38 subdivision seven of section 353.3 of the family court act and in the
39 educational components of permanency hearing reports submitted pursuant
40 to section one thousand eighty-nine of the family court act and the
41 compliance by local school districts with the regulations promulgated
42 pursuant to subdivision one of this section; and any recommendations to
43 ensure compliance with the rules of regents, regulations of the commis-
44 sioner, and this chapter.

45 § 63. The domestic relations law is amended by adding a new section
46 112-b to read as follows:

47 § 112-b. Post-adoption contact agreements; judicial approval; enforce-
48 ment. 1. Nothing in this section shall be construed to prohibit the
49 parties to a proceeding under this chapter from entering into an agree-
50 ment regarding communication with or contact between an adoptive child,
51 adoptive parent or parents and a birth parent or parents and/or the
52 adoptive child's biological siblings or half-siblings.

53 2. Agreements regarding communication with contact between an adoptive
54 child, adoptive parent or parents, and a birth parent or parents and/or
55 biological siblings or half-siblings of an adoptive child shall not be
56 legally enforceable unless the terms of the agreement are incorporated

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1 into a written court order entered in accordance with the provisions of
2 this section. The court shall not incorporate an agreement regarding
3 communication or contact into an order unless the terms and conditions
4 of the agreement have been set forth in writing and consented to in
5 writing by the parties to the agreement, including the law guardian
6 representing the adoptive child. The court shall not enter a proposed
7 order unless it has found that the communication with or contact between
8 the adoptive child, the prospective adoptive parent or parents and a
9 birth parent or parents and/or biological siblings or half-siblings, as
10 agreed upon and as set forth in the agreement, would be in the adoptive
11 child's best interests. Notwithstanding any other provision of law, a
12 copy of any order entered pursuant to this section shall be given to all
13 parties who have agreed to the terms and conditions of such order.

14 3. Failure to comply with the terms and conditions of an approved
15 order regarding communication or contact that has been entered by the
16 court pursuant to this section shall not be grounds for setting aside an
17 adoption decree or revocation of written consent to an adoption after
18 that consent has been approved by the court as provided in this section.

19 4. An order incorporating an agreement regarding communication or
20 contact entered under this section may be enforced by any party to the
21 agreement or the law guardian by filing a petition in the family court
22 in the county where the adoption was approved. Such petition shall have
23 annexed to it a copy of the order approving the agreement regarding
24 communication or contact. The court shall not enforce an order under
25 this section unless it finds that the enforcement is in the child's best
26 interests.

27 5. If a birth parent has surrendered a child to an authorized agency
28 pursuant to the provisions of section three hundred eighty-three-c or
29 section three hundred eighty-four of the social services law, and if the
30 court before whom the surrender instrument was presented for approval
31 approved an agreement providing for communication or contact pursuant to
32 paragraph (a) of subdivision two of section three hundred eighty-
33 three-c or paragraph (a) of subdivision two of section three hundred
34 eighty-four of the social services law, a copy of the surrender instru-
35 ment and of the approved agreement shall be annexed to the petition of
36 adoption. The court shall issue an order incorporating the terms and
37 conditions of the approved agreement into the order of adoption.
38 Notwithstanding any other provision of law, a copy of any order entered
39 pursuant to this subdivision shall be given to the parties who approved
40 such agreement.

41 6. If a surrender instrument executed by a birth parent pursuant to
42 section three hundred eighty-three-c or three hundred eighty-four of the
43 social services law contains terms and conditions that provide for
44 communication with or contact between a child and a birth parent or
45 parents, such terms and conditions shall not be legally enforceable
46 after any adoption approved by a court pursuant to this article unless
47 the court has entered an order pursuant to this section incorporating
48 those terms and conditions into a court ordered adoption agreement.

49 § 64. Subdivision (e) of section 1101 of the civil practice law and
50 rules, as added by chapter 216 of the laws of 1992, is amended to read
51 as follows:

52 (e) When motion not required. Where a party is represented in a civil
53 action by a legal aid society or a legal services or other nonprofit
54 organization, which has as its primary purpose the furnishing of legal
55 services to indigent persons, or by private counsel working on behalf of
56 or under the auspices of such society or organization, all fees and

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1 costs relating to the filing and service shall be waived without the
2 necessity of a motion and the case shall be given an index number, or,
3 in a court other than the supreme or county court, an appropriate filing
4 number, provided that a determination has been made by such society,
5 organization or attorney that such party is unable to pay the costs,
6 fees and expenses necessary to prosecute or defend the action, and that
7 an attorney's certification that such determination has been made is
8 filed with the clerk of the court along with the summons and complaint
9 or summons with notice or third-party summons and complaint or otherwise
10 provided to the clerk of the court. Where an attorney certifies, pursu-
11 ant to section eleven hundred eighteen of the family court act, and in
12 accordance with procedures of the appropriate appellate division, that a
13 party or child who is the subject of an appeal has been represented in
14 the family court by assigned counsel or a law guardian or by a legal aid
15 society or a legal services or other nonprofit organization, which has
16 as its primary purpose the furnishing of legal services to indigent
17 persons, or by private counsel working on behalf of or under the
18 auspices of such society or organization, and, in the case of a counsel
19 assigned to an adult party, that the party continues to be indigent, the
20 party or child shall be presumed eligible for poor person relief pursu-
21 ant to this section.

22 § 65. Subdivision (b) of rule 5521 of the civil practice law and
23 rules, as added by chapter 582 of the laws of 1991, is amended to read
24 as follows:

25 (b) Consistent with the provisions of section one thousand one hundred
26 twelve of the family court act, appeals from orders, judgments or
27 decrees in proceedings brought pursuant to articles three, seven [~~and~~],
28 ten and ten-A and [~~part~~] parts one and two of article six of the family
29 court act, and pursuant to sections three hundred fifty-eight-a, three
30 hundred eighty-three-c, three hundred eighty-four, and three hundred
31 eighty-four-b [~~and three hundred ninety-two~~] of the social services law,
32 shall be given preference and may be brought on for argument on such
33 terms and conditions as the court may direct[~~, upon application of any~~
34 ~~party or counsel for a minor who is the subject of the proceeding~~] with-
35 out the necessity of a motion.

36 § 66. The closing paragraph of subdivision (g) of section 9.51 of the
37 mental hygiene law, as added by chapter 947 of the laws of 1981, is
38 amended to read as follows:

39 Confidentiality of clinical records of treatment of a person in a
40 residential treatment facility for children and youth shall be main-
41 tained as required in section 33.13 of this chapter. That portion of the
42 clinical record maintained by a residential treatment facility for chil-
43 dren and youth operated by an authorized agency specifically related to
44 medical care and treatment shall not be considered part of the record
45 required to be maintained by such authorized agency pursuant to section
46 three hundred seventy-two of the social services law and shall not be
47 discoverable in a proceeding under section three hundred fifty-eight-a
48 of the social services law or [~~three hundred ninety-two of the social~~
49 ~~services law~~] article ten-A of the family court act except upon order of
50 the family court; provided, however, that all other information required
51 by a local social services district or the [~~state department of social~~]
52 office of children and family services for purposes of sections three
53 hundred fifty-eight-a, [~~three hundred ninety-two,~~] four hundred nine-e
54 and four hundred nine-f of the social services law and article ten-A of
55 the family court act shall be furnished on request, and the confiden-

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1 tiality of such information shall be safeguarded as provided in section
2 four hundred sixty-e of the social services law.

3 § 67. This act shall take effect on the one hundred twentieth day
4 after it shall have become a law; provided, however, that notwithstand-
5 ing any law to the contrary, the office of children and family services
6 shall have the authority to promulgate, on an emergency basis, any rules
7 and regulations necessary to implement the requirements established
8 pursuant to this act.

9

PART B

10 Section 1. Subdivision 15 of section 301.2 of the family court act, as
11 added by chapter 7 of the laws of 1999, is amended to read as follows:

12 15. "Aggravated circumstances" [~~means where a respondent has been~~
13 ~~either severely or repeatedly abused, as defined in subdivision eight of~~
14 ~~section three hundred eighty four b of the social services law~~] shall
15 have the same meaning as the definition of such term in subdivision (j)
16 of section one thousand twelve of this act.

17 § 2. Subdivision (g) of section 712 of the family court act, as added
18 by chapter 7 of the laws of 1999, is amended to read as follows:

19 (g) "Aggravated circumstances". [~~The circumstance where a child has~~
20 ~~been either severely or repeatedly abused, as defined in subdivision~~
21 ~~eight of section three hundred eighty four b of the social services law~~]
22 Aggravated circumstances shall have the same meaning as the definition
23 of such term in subdivision (j) of section one thousand twelve of this
24 act.

25 § 3. Subdivision (j) of section 1012 of the family court act, as added
26 by chapter 7 of the laws of 1999, is amended to read as follows:

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

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1 with the intent that the child be safe from physical injury and cared
2 for in an appropriate manner.

3 § 4. Section 1042 of the family court act, as added by chapter 962 of
4 the laws of 1970, is amended to read as follows:

5 § 1042. Effect of absence of parent or other person responsible for
6 care. If the parent or other person legally responsible for the child's
7 care is not present, the court may proceed to hear a petition under this
8 article only if the child is represented by counsel, a law guardian, or
9 a guardian ad litem. ~~[if]~~ The parent or other person legally responsible
10 for the child's care shall be served with a copy of the order of dispo-
11 sition with written notice of its entry pursuant to section one thousand
12 thirty-six of this article. Within one year of such service or substi-
13 tuted service pursuant to section one thousand thirty-six of this arti-
14 cle, the parent or other person legally responsible for the child's care
15 ~~[thereafter moves the court that a resulting disposition be vacated and~~
16 ~~asks for a]~~ may move to vacate the order of disposition and schedule a
17 rehearing[, the court shall grant the]. Such motion shall be granted on
18 an affidavit showing such relationship or responsibility and a meritori-
19 ous defense to the petition, unless the court finds that the parent or
20 other person willfully refused to appear at the hearing, in which case
21 the court may deny the motion.

22 § 5. Subdivision 12 of section 358-a of the social services law, as
23 added by chapter 7 of the laws of 1999, is amended to read as follows:

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

54 § 6. Section 415 of the social services law, as separately amended by
55 chapters 545 and 634 of the laws of 1988, is amended to read as follows:

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1 § 415. Reporting procedure. Reports of suspected child abuse or
2 maltreatment made pursuant to this title shall be made immediately by
3 telephone or by telephone facsimile machine on a form supplied by the
4 commissioner of the office of children and family services. Oral reports
5 shall be followed by a report in writing within forty-eight hours after
6 such oral report. Oral reports shall be made to the statewide central
7 register of child abuse and maltreatment unless the appropriate local
8 plan for the provision of child protective services provides that oral
9 reports should be made to the local child protective service. In those
10 localities in which oral reports are made initially to the local child
11 protective service, the child protective service shall immediately make
12 an oral or electronic report to the statewide central register. Written
13 reports shall be made to the appropriate local child protective service
14 except that written reports involving children in residential care, as
15 defined in subdivision seven of section four hundred twelve of this
16 title, or being cared for in a home operated or supervised by an author-
17 ized agency, [~~the division for youth~~] office of children and family
18 services, or an office of the department of mental hygiene, shall be
19 made to the statewide central register of child abuse and maltreatment
20 which shall transmit the reports to the agency responsible for investi-
21 gating the report, in accordance with paragraph (a) or (c) of subdivi-
22 sion eleven of section four hundred twenty-two or section four hundred
23 twenty-four-b of this title, as applicable. Written reports shall be
24 made in a manner prescribed and on forms supplied by the commissioner of
25 the office of children and family services and shall include the follow-
26 ing information: the names and addresses of the child and his or her
27 parents or other person responsible for his or her care, if known, and,
28 as the case may be, the name and address of the residential care facili-
29 ty or program in which the child resides or is receiving care; the
30 child's age, sex and race; the nature and extent of the child's inju-
31 ries, abuse or maltreatment, including any evidence of prior injuries,
32 abuse or maltreatment to the child or, as the case may be, his or her
33 siblings; the name of the person or persons alleged to be responsible
34 for causing the injury, abuse or maltreatment, if known; family composi-
35 tion, where appropriate; the source of the report; the person making the
36 report and where he or she can be reached; the actions taken by the
37 reporting source, including the taking of photographs and x-rays,
38 removing or keeping of the child or notifying the medical examiner or
39 coroner; and any other information which the commissioner of the office
40 of children and family services may, by regulation, require, or the
41 person making the report believes might be helpful, in the furtherance
42 of the purposes of this title. Notwithstanding the privileges set forth
43 in article forty-five of the civil practice law and rules, and any other
44 provision of law to the contrary, mandated reporters who make a report
45 which initiates an investigation of an allegation of child abuse or
46 maltreatment are required to comply with all requests for records made
47 by a child protective service relating to such report, including records
48 relating to diagnosis, prognosis or treatment, and clinical records, of
49 any patient or client that are essential for a full investigation of
50 allegations of child abuse or maltreatment pursuant to this title;
51 provided, however, that disclosure of substance abuse treatment records
52 shall be made pursuant to the standards and procedures for disclosure of
53 such records delineated in federal law. Written reports from persons or
54 officials required by this title to report shall be admissible in
55 evidence in any proceedings relating to child abuse or maltreatment.

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1 § 7. This act shall take effect on the ninetieth day after it shall
2 have become a law.

3 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-
4 sion, section or part of this act shall be adjudged by any court of
5 competent jurisdiction to be invalid, such judgment shall not affect,
6 impair, or invalidate the remainder thereof, but shall be confined in
7 its operation to the clause, sentence, paragraph, subdivision, section
8 or part thereof directly involved in the controversy in which such judg-
9 ment shall have been rendered. It is hereby declared to be the intent of
10 the legislature that this act would have been enacted even if such
11 invalid provisions had not been included herein.

12 § 3. This act shall take effect immediately; provided, however, that
13 the applicable effective date of Parts A and B of this act shall be as
14 specifically set forth in the last section of such Parts.

SPONSORS MEMO:

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

BILL NUMBER: S5805

SPONSOR: MEIER

TITLE OF BILL: An act to amend the family court act, the social services law, the education law, the domestic relations law, the civil practice law and rules and the mental hygiene law, in relation to judicial review and permanency hearings for children placed out of their homes; and to repeal certain provisions of the family court act and the social services law relating thereto (Part A); and to amend the family court act and the social services law, in relation to aggravated circumstances (Part B)

PURPOSE:

This bill would: (1) grant the courts continuing jurisdiction over children in foster care placements under Article 10 of the Family Court Act who have been voluntarily placed in foster care, or who have been freed for adoption, (2) improve permanency outcomes for children in foster care, and (3) provide for comprehensive reform of the provisions of law which govern the court processes for children placed in the foster care. In addition, this legislation would facilitate permanency planning for such children and bring New York more affirmatively into compliance with federal guidelines laid forth in the Adoption and Safe Families Act (ASFA) and requirements under Title IV -E of the Social Security Act.

SUMMARY OF PROVISIONS:

Section 1 of this bill indicates that this legislation is made up of components contained in Parts A and B. Each Part includes an effective date for the provisions contained in that Part.

PART A

Section 1 of Part A would amend section 115 of the Family Court Act to provide Family Court jurisdiction over permanency hearings held pursuant

to the new Article 10-A of the Family Court Act and add child welfare proceedings pursuant to the new Article 10-A to the list of proceedings that are governed by federal law regarding Indian tribes.

Section 2 of Part A would amend section 249 of the Family Court Act to provide children in permanency hearings held pursuant to the new Article 10-A the right to have a law guardian appointed by the court, and to remove a reference to section 392 of Social Services Law, which this bill would repeal.

Section 3 of Part A would amend section 262 of the Family Court Act to provide indigent parents in permanency hearings held pursuant to the new Article 10-A the right to have counsel assigned by the court.

Section 4 of Part A would both make a technical correction to section 614 of the Family Court Act to accurately cross reference the new Article 10-A of the Family Court Act, and to provide that the period of time which a permanently neglected child must remain in foster care before a proceeding may be initiated for custody and guardianship of a child is either at least one year or 15 out of the most recent 22 months.

Section 5 of Part A would amend section 623 of the Family Court Act to require that children freed for adoption are scheduled for permanency hearings pursuant to the new Article 10-A of the Family Court Act.

Section 6 of Part A would amend section 625 of the Family Court Act to require that children freed for adoption are scheduled for permanency hearings pursuant to the new Article 10-A of the Family Court Act.

Section 7 of Part A would amend section 633 of the Family Court Act to clarify procedures for suspended judgments in permanent neglect proceedings and limit the amount of time allowed for a suspended judgment to an original term of up to one year with a single one year extension available.

Section 8 of Part A would amend section 1012 of the Family Court Act to correctly cross reference the new Article 10-A of the Family Court Act in the definition of permanency hearing.

Section 9 of Part A would amend section 1016 of the Family Court Act to clarify that the appointment of a law guardian for a child placed under Article 10 of the Family Court Act shall continue during the pendency of the child's time in foster care.

Section 10 of Part A would amend section 1017 of the Family Court Act to require local social services districts to conduct an immediate investigation to locate any non-respondent parent and that the results of such investigation are documented in the case record and to allow the court to place a child removed from his or her home in the custody of a non-respondent parent or other relative or person under Article 6 of the FCA, without another proceeding being initiated.

Section 11 of Part A would add a new section 1018 to the Family Court Act to allow the Court to authorize the use of conferencing or mediation, including conferencing or mediation that would involve family members or other adults significant to the child, at any point in a proceeding, to further a plan for a child that promotes the child's health, safety and well-being.

Section 12 of Part A would amend section 1021 of the Family Court Act to provide that written notice be given to the parent upon a temporary removal with consent. Such notice must include contact information for the person removing the child, contact information for the agency with whom the child will be placed, if available, and notice of the parent's right to file for a hearing for return of the child.

Section 13 of Part A would amend section 1022 of the Family Court Act to

require that an application for the immediate temporary removal of a child from his or her home be placed on the court calendar for that day and continued until a decision is issued and to require the court to set a date certain for the initial permanency hearing regarding a child who is placed in foster care.

Section 14 of Part A would amend section 1026 of the Family Court Act to require that a petition under Article 10 of the Family Court Act be filed no later than the next day that court is in session after a child is removed on an emergency basis and that a hearing on the removal is held on the day after the petition is filed.

Section 15 of Part A would amend section 1027 of the Family Court Act to require that a hearing on the removal of a child be held no later than the next court day after the petition is filed in every case where a child has been removed without court order and where a respondent was not represented and did not waive his or her right to counsel where a hearing was held pursuant to 1022 of the Family Court Act was held and to require that the Court set a date certain for the permanency hearing in every case where the removal of the child is continued.

Section 16 of Part A would amend section 1035 of the Family Court Act to clarify the time frames for filing a petition regarding abuse or neglect where a child has not been removed on an emergency basis.

Section 17 of Part A would amend section 1051 of the Family Court Act to change the term of placement for foster care from up to one year to until completion of the permanency hearing scheduled pursuant to the new Article 10-A of the Family Court Act.

Section 18 of Part A would amend section 1055 of the Family Court Act to allow terms of placement to be extended at the initial and subsequent permanency hearings, to remove the requirements for permanency hearings and replace them with the new Article 10-A of the Family Court Act and to require certain information be recorded regarding a diligent search for the parent of an abandoned child.

Section 19 of Part A would repeal section 1055-a of the Family Court Act and replace it with a new section 1055-a which would establish procedures to be followed after the substantial failure of a material condition of a surrender and create limited rights to enforce communication or contact provisions established in a surrender instrument.

Section 20 of Part A would amend section 1058 of the Family Court Act to remove the requirement that the child protective agency report to the court no later than 60 days before the expiration of the term of placement under Article 10 of the Family Court Act.

Section 21 of Part A would amend section 1062 of the Family Court Act to change references to a "petition" to terminate placement to a "motion" to terminate placement, to be consistent with the revisions to section 1055 of the Family Court Act.

Section 22 of Part A would amend section 1063 of the Family Court Act to change references to "petition" to "motion" and to permit service of the motion to terminate placement to regular mail.

Section 23 of Part A would amend section 1064 of the Family Court Act pertaining to examination of a termination of placement petition and hearing, to change references to "petition" to "motion".

Section 24 of Part A would amend section 1065 of the Family Court Act to change the reference to a petition to terminate placement to a reference to a motion to terminate placement and to re-phrase the court's power to reduce the duration of the placement with the power to determine a schedule for the return of the child.

Section 25 of Part A would amend section 1066 of the Family Court Act to change the reference to successive petitions to terminate placements to successive motions to terminate placements.

Section 26 of Part A would amend section 1068 of the Family Court Act to make a technical correction to the cite listed in the section.

Section 27 of Part A would add a new Article 10-A to the Family Court Act that would:

- * Establish statutory definitions for the terms child, child freed for adoption, foster care, agency and permanency hearing report;
- * Provide that permanency hearings be held regarding children who consent to continuation in foster care after age 18;
- * Establish continuing court jurisdiction over any case in which a child is placed in foster care under sections 358-a, 384 or 384-a of the Social Services Law or sections 1017, 1022, 1027 or 1052 of the Family Court Act, or is freed for adoption pursuant to sections 383, 384, or 384-b of the Social Services Law until the child is discharged from placement and all other orders have expired;
- * For children freed for adoption, at the conclusion of the hearing at which the child was freed for adoption, require the Court to set a date certain for an initial permanency hearing within 30 days of the dispositional hearing, and require that the hearing must be completed within 30 days of commencement of the permanency hearing, unless the court determines to immediately proceed to a permanency hearing after the hearing at which the child was freed, where proper notice has been given;
- * For all other covered children, at the conclusion of the hearing where the child was remanded or placed, require the Court set a date certain an initial permanency hearing, which must be held within six months from the date which is 60 days after the child's removal from the home, and would further require the hearing to be completed within 30 days of commencement;
- * Require that notice of the permanency hearing along with a permanency hearing report be served on any parties (the parent, any non-respondent parent, any other person legally responsible for the child, or the current foster parent) and the supervising agency, child's law guardian, and the respondent parent's attorney by regular mail no later than 14 days before the scheduled hearing;
- * Require notice to any pre-adoptive parent providing care or former foster care parent with whom the child had resided for a continuous twelve-month period, and permit such person to have an opportunity to be heard, and provide that failure of such person to appear shall constitute a waiver of the right to be heard;
- * Require the permanency hearing report prepared by the local social services district to contain information on the child's current permanency goal, health and well-being including educational information, the status of the parent, the description of the reasonable efforts the social services district has taken to achieve the permanency plan, and the recommended permanency plan;
- * Amend allowable permanency goals to provide that the goal placement in another planned permanent living arrangement require a significant connection to an adult willing to be a permanency resource for the child;
- * Clarify that children age 14 or older must be provided with services and assistance to enable the child to learn independent living skills;

* Require the Court to issue findings on and enter a written disposition and order including directing termination of placement, if appropriate. Where placement is extended, the findings and order must include, among other things: (1) the child's permanency goal and the anticipated date for achieving the goal; (2) the possibility of placing the child with a fit and willing relative or continuing current placement until the completion of the next permanency hearing; (3) whether reasonable efforts have been made to effectuate the child's permanency plan; (4) what efforts should be made to effectuate another permanency plan if return of the child home is not likely; and (5) specifying the date certain for the next permanency hearing;

* Require that subsequent permanency hearings be held every six months after completion of the prior permanency hearing; and

* Provide for continuing legal representation of parties while the court maintains jurisdiction over the case.

Section 28 of Part A would amend section 1112 of the Family Court Act to expedite appeals of child welfare proceedings by creating a preference according to the Civil Practice Law and Rules without the necessity of a motion.

Section 29 of Part A would amend section 1115 of the Family Court Act to establish an appeal as of right in child welfare proceedings and to ensure that notice of any appeal is served on the law guardian.

Section 30 of Part A would amend section 1118 of the Family Court Act to create an expedited process for determining that a respondent in a child welfare proceeding is entitled to poor persons relief.

Section 31 of Part A would amend section 1120 of the Family Court Act to provide for continued legal representation for a respondent on appeal.

Section 32 of Part A would amend section 1121 of the Family Court Act to: (i) add a cross reference to Article 10-A of the Family Court Act, to require the law guardian or respondent's counsel to file a certification of continued indigency and continued eligibility for appointment of counsel, (ii) expedite the production of transcripts for appeals, and (iii) require the appellate divisions to establish procedures to ensure the expeditious filing and service of appellate briefs and replies.

Section 33 of Part A would amend section 22 of the Social Services Law to change the reference to section 392 of the Social Services Law to section 1087 of the Family Court Act.

Section 34 of Part A would amend section 39 of the Social Services Law to add proceedings under the new Article 10-A of the Family Court Act to the list of proceedings over which an Indian tribe may assume jurisdiction.

Section 35 of Part A would amend subdivision 2-a of section 358-a of the Social Services Law to provide continuing court jurisdiction over children who are voluntarily placed in foster care as long as the child remains in care and to require permanency hearings for those voluntarily placed children pursuant to the new Article 10-A of the Family Court Act. Section 36 of Part A would amend paragraphs (a) and (b) of subdivision 3 of section 358-a of the Social Services Law to correctly reflect the available permanency options and to cross reference the new Article 10-A of the Family Court Act to trigger a permanency hearing in the case of a voluntarily placed child for whom the Court has determined that reasonable efforts are not necessary.

Section 37 of Part A would amend paragraph (f) of subdivision 3 of section 358-a of the Social Services Law to require that the court make a finding of services necessary to help a voluntarily placed child 14

years or older learn independent living skills.

Section 38 of Part A would repeal paragraph (c) of subdivision 4 of section 358-a, which would be superseded by the notice provisions in the new Article 10-A.

Section 39 of Part A would amend subdivisions 7 and 8 of section 358-a of the Social Services Law to change the reference to a petition for return of a child to a motion for return of a child and to accurately cross reference the new Article 10-A of the Family Court Act for permanency hearings.

Section 40 of Part A would amend section 378 of the Social Services Law to accurately cross reference the definition of a child freed for adoption to the new Article 10-A of the Family Court Act.

Section 41 of Part A would amend subdivision 2 of section 383-c of the Social Services Law to clarify under which circumstances the court may accept a surrender conditioned on adoption by a particular person and require that the court determine whether provisions for ongoing communication or contact in a surrender instrument are in the best interests of the child and to provide for enforcement procedures for those provisions if they are approved by the court.

Section 42 of Part A would amend paragraph (b) of subdivision 3 of section 383-c of the Social Services Law to require that the court determine whether provisions for ongoing communication or contact are in the child's best interests before approving a judicial surrender.

Section 43 of Part A would amend paragraph (c) of subdivision 5 of section 383-c of the Social Services Law to limit the time that a parent or law guardian has to file a petition following the substantial failure of a material condition of a surrender to 60 days after the parent or law guardian receives notice of such failure and before the adoption of the child.

Section 44 of Part A would amend paragraph (d) of subdivision 5 of section 383-c of the Social Services Law to limit the time that a parent or law guardian has to file a petition following the substantial failure of a material condition of surrender to 60 days after that parent or law guardian receives notice of such failure.

Section 45 of Part A would add a new paragraph (g) to subdivision 5 of section 383-c of the Social Services Law to require that a parent executing a surrender instrument provide identifying information that the parent may have regarding any other person who may be entitled to notice of a proceeding to terminate parental rights and that such information be maintained as part of the case record.

Section 46 of Part A would amend subdivision 6 of section 383-c of the Social Services Law to limit the time that a parent or law guardian has to file a petition upon the failure of a material condition of a surrender to 60 days after receiving notice of such failure and before the adoption of the child.

Section 47 of Part A would amend subdivision 10 of section 383-c of the Social Services Law to cross reference the new Article 10-A of the Family Court Act regarding permanency hearings for children who are freed for adoption.

Section 48 of Part A would amend subdivision 2 of section 384 of the Social Services Law to require an initial judicial finding that terms and conditions in a surrender instrument that provide for ongoing communication and contact are in the child's best interests and to provide for subsequent enforcement procedures for those terms and conditions.

Section 49 of Part A would amend subdivision 3 of section 384 of the Social Services Law to remove a cross reference to Section 392 of the Social Services Law and to limit the time that a parent or law guardian has to file a petition after being notified of the failure of a material condition of a surrender to 60 days after receipt of such notification and before the adoption of the child.

Section 50 of Part A would amend subdivision 5 of section 384 of the Social Services Law to accurately cross reference the new Article 10-A of the Family Court Act and to limit the time that a parent or law guardian has to file a petition after being notified of the failure of material condition of a surrender to 60 days after receipt of such notification and before the adoption of the child.

Section 51 of Part A would amend subdivision 7 of section 384 of the Social Services Law and add a new subdivision 8 to cross reference the new Article 10-A of the Family Court Act for permanency hearings for children freed for adoption and to require that identifying information regarding anyone required to be notified of a proceeding to terminate parental rights be collected from the person executing the surrender and be maintained as part of the case record.

Section 52 of Part A would amend subdivision 1 of section 384-a of the Social Services Law to remove a cross reference to section 392 of the Social Services Law.

Section 53 of Part A would add a new subdivision 1-b to section 384-a of the Social Services Law to require that identifying information about any person who would be entitled to notice of a proceeding to terminate parental rights be collected from the parent executing a voluntary placement and that such information be maintained in the case record.

Section 54 of Part A would amend subdivision 2 of section 384-a of the Social Services Law to accurately cross reference the new Article 10-A of the Family Court Act to trigger permanency hearings for children who are voluntarily placed in foster care.

Section 55 of Part A would amend subdivision 3 of section 384-b of the Social Services Law to accurately reference the new Article 10-A of the Family Court Act to require that the attorney for a parent receives notice of a proceeding to terminate parental rights.

Section 56 of Part A would amend subdivision 4 of section 384-b of the Social Services Law to eliminate the requirement that a child be in the care of an authorized agency for a year immediately prior to the initiation of a proceeding to terminate parental rights where a child has been severely or repeatedly abused.

Section 57 of Part A would amend subdivision 7 of section 384-b of the Social Services Law to remove a cross reference to section 392 of the Social Services Law and provide that the period of time that a permanently neglected child must remain in foster care before a proceeding may be initiated for custody and guardianship of the child is the either at least one year or 15 out of the most recent 22 months.

Section 58 of Part A would amend subdivision 8 and 9 of section 384-b of the Social Services Law to direct that permanency hearings for children freed for adoption through a termination of parental rights receive permanency hearings pursuant to the new Article 10-A of the Family Court Act.

Section 59 of Part A would repeal section 392 of the Social Services Law.

Section 60 of Part A would amend subdivisions 1, 2 and 3 of section 409-e of the Social Services Law to: (i) accurately cross reference the

new Article 10-A of the Family Court Act, (ii) require an initial or an update of a family services plan be completed within thirty days of the child's removal from home, and (iii) require a review of the plan to be made within 90 days of the date the child was first considered for foster care or the date of removal, a second review 120 days subsequent to the initial review and every six months thereafter.

Section 61 of Part A would amend section 442 of the Social Services Law to accurately cross reference the new Article 10-A of the Family Court Act.

Section 62 of Part A would amend section 112 of the Education Law to require the New York State Education Department to promulgate regulations mandating school districts to cooperate in the implementation of the educational provisions of each child's permanency plan and to require that educational services provided to children in, and released from, foster care and that local school district compliance with the newly required regulations be part of the annual report by the Education Commissioner. This section further would require that any regulations regarding the educational components of permanency plans be developed in conjunction with the Office of Children and Family Services (OCFS).

Section 63 of Part A would add a new section 112-b to the Domestic Relations Law to create enforcement procedures for communication and contact provisions that are incorporated into adoption orders.

Section 64 of Part A would amend section 1101 of the Civil Practice Law and Rules to allow the appellate court to presume a child or a parent to be eligible for poor persons relief if they have been previously represented by a law guardian, assigned counsel, a Legal Aid Society or Legal Services or other nonprofit organization, or by private counsel working on behalf of or under the auspices of a Legal Aid Society or Legal Services or other nonprofit organization.

Section 65 of Part A would amend section 5521 of the Civil Practice Law and Rules to create a preference for appeals under the new Article 10-A of the Family Court Act and sections 383-c and 384 of the Social Services Law without the necessity of a motion.

Section 66 of Part A would amend section 9.51 of the Mental Hygiene Law to accurately cross reference the new Article 10-A of the Family Court Act.

Section 67 of Part A would provide for an effective date for Part A of 120 days following enactment and also authorize the OCFS to issue regulations on an emergency basis.

PART B

Section 1 of Part B would amend the definition of "aggravated circumstances" in subdivision 15 of section 301.2 of the Family Court Act to conform to the revised definition of aggravated circumstances in subdivision (j) of section 1012 of the Family Court Act.

Section 2 of Part B would amend the definition of "aggravated circumstances" in subdivision (g) of section 712 of the Family Court Act, pertaining to persons in need of supervision (PINS), to conform to the revised definition of aggravated circumstances in subdivision (j) of section 1012 of the Family Court Act.

Section 3 of Part B would amend subdivision (j) of section 1012 of the Family Court Act to expand the definition of "aggravated circumstances" to include where: (i) a child is subsequently found to be an abused child as defined in paragraphs (i) or (iii) of subdivision e of section 1012 of the family court act within five years after returning home from a foster care placement based upon the child having previously been found to have been neglected by the same respondent or respondents; (ii) where a court finds by clear and convincing evidence that the parent of a child in foster care has refused services in specific situations; or (iii) an infant five days old or younger is abandoned under certain

circumstances.

Section 4 of Part B would amend section 1042 of the Family Court Act to limit when a parent who fails to appear at a hearing filed under Article 10 of the Family Court Act may apply to reopen the proceeding to within one year of service of a copy of the order of disposition and require that the parent offer a meritorious defense.

Section 5 of Part B would amend subdivision 12 of section 358-a of the Social Services Law to expand the definition of "aggravated circumstances" to include where: i) a child is subsequently found to be an abused child as defined in paragraphs (i) or (iii) of subdivision e of section 1012 of the family court act within five years after returning home from a foster care placement based upon the child having previously been found to have been neglected by the same respondent or respondents; (ii) where a court finds by clear and convincing evidence that the parent of a child in foster care has refused services in specific situations; or (iii) an infant five days old or younger is abandoned under certain circumstances.

Section 6 of Part B would amend section 415 of the Social Services Law to require a mandated reporter to produce records regarding a child protective services investigation initiated as a result of a report by the mandated reporter, notwithstanding any law or privilege to the contrary.

Section 7 of Part B would provide for an effective date of Part B of 90 days after enactment.

Section 2 of the bill provides for severability of the bill components and Parts.

Section 3 of the bill provides for an immediate effective date.

EXISTING LAW:

Chapter 436 of the Laws of 1997 created the Office of Children and Family Services (OCFS) by combining the juvenile justice functions and responsibilities of the former Division for Youth with enumerated functions and responsibilities of the former Department of Social Services. Sections 301.2 and 712 of the Family Court Act contain definitions for terms used in those articles with respect to juvenile delinquency proceedings and PINS proceedings, respectively.

Sections 614 and 617 of the Family Court Act provide a process for initiating a proceeding to commit the custody and guardianship of a permanently neglected child.

Sections 623 and 625 of the Family Court Act provide for dispositional proceedings and periodic review of the permanency plan of children whose custody and guardianship are committed.

Subdivision (j) of section 1012 of the Family Court Act defines "aggravated circumstances" as where a child has been either severely or repeatedly abused.

Section 1022 of the Family Court Act provides procedures and terms for a preliminary court order, including an order of temporary removal of a child from home, before a child protective petition is filed.

Section 1042 of the Family Court Act permits a court to proceed with a child protective hearing in the absence of the parent and provides a procedure for the parent to request that the case be reopened.

Section 1051 of the Family Court Act permits the placement of a child adjudged to be abused or neglected in foster care for a period of up to one year, subject to further extensions of placement of up to one year each.

Section 1055 of the Family Court Act provides procedures and requirements for the periodic review of the foster care status and permanency plan of an abused or neglected child in foster care. Section 1055-a of the Family Court Act provides procedures and requirements for the periodic review of the foster care status and permanency plan of an abused or neglected child in foster care who is freed for adoption.

Section 1058 of the Family Court Act requires the child protective services to report on the status of the child and the child's family to the court and the parties 60 days prior to the expiration of an order issued pursuant to sections 1052, 1039 or 1055 of Article 10 of the Family Court Act.

Part 6 of Article 10 of the Family Court Act provides a procedure for an interested party in a child protective proceeding to petition the court for a termination of the placement of a child placed in accordance with section 1055 of the Family Court Act.

Section 1069 of the Family Court Act pertains to rules of court requiring notification of a change in placement of a child placed pursuant to former section 355 of the Family Court Act.

Section 358-a of the Social Services Law provides a procedure for the court to approve the transfer of custody of a child to the local social services official pursuant to an instrument signed by the child's parent, and a procedure for periodic review the status of the custody the child.

Section 383-c of the Social Services Law provides a procedure for the surrender of a child.

Section 384-a of the Social Services Law provides a procedure for the temporary transfer of care and custody of a child.

Section 384-b of the Social Services Law provides for termination of parental rights in various specified circumstances, one of which is severe or repeated abuse of a child by the child's parent. Presently, a petition to terminate parental rights based on severe or repeated abuse cannot be brought until the child has been in the care of an authorized agency (i.e., been in foster care) for at least one year. Further, one of the elements that must be proved to terminate parental rights under this rationale is that the parent acted under circumstances evincing a depraved indifference to human life.

Section 392 of the Social Services Law provides procedures and requirements for the periodic review of the foster care status and permanency plan of an abused or neglected child in foster care.

Section 409-e of the Social Services Law provides for an initial service plan to be developed within 30 days, with a comprehensive service plan to be developed within 90 days. The first review must occur within six months of the child's entry into foster care.

STATEMENT IN SUPPORT:

PART A

This bill would provide the Family Court with continuing jurisdiction in Family Court Act Article 10 child protective proceedings, and where a child is voluntarily placed in foster care under the Social Services Law. Under current law, when an Article 10 proceeding alleging abuse or neglect is initiated, a court must obtain jurisdiction over the respondent. A respondent must be personally served with the Article 10 petition for a court to take any action regarding a petition. After the initial finding of abuse or neglect, even where the child is placed in foster care and orders are issued regarding the respondent parents, the Court's jurisdiction over the parties ends with the order of disposition. Any other action necessary to pursue return of the child home, including holding permanency hearings for court review of the permanency plan for the child, requires the filing of a new petition and delay occasioned by the calendaring of that petition. Again, service upon the respondents must be effected for each new petition before the Court may address the gravamen of the petition, although the Court previously established jurisdiction over those parties at the initiation of the original proceeding. Once service is effected and the parties finally appear in court, the respondent must again ask that an attorney be appointed to represent him or her. An adjournment must be granted to allow appointment of an attorney and to allow the attorney to become familiar with the proceeding.

In many instances under the current system, it may take longer than a month until all the parties are before the Court with legal representation, as is their right, once the case is calendared. The same process and potential for time delays applies to permanency hearings regarding a child placed in foster care under a voluntary placement agreement.

Each time a permanency hearing is delayed, a child potentially stays needlessly longer in foster care. If the permanency hearing is not timely held, pursuant to federal mandate, the local social services district will lose federal funding for foster care for the child.

This bill seeks to improve permanency by granting the Family Court "continuing jurisdiction" over the parties while the child is in foster care placement, similar to all other civil actions where a court's jurisdiction is continued until the matter is concluded. The law guardian assigned to the child would continue to represent the child throughout the time the child is in placement. Similarly, the respondent parent, if eligible, would be provided an assigned attorney throughout the life of the proceeding before the Court, through the final disposition of any appeal. Both the law guardian and the respondent parent's attorney would receive copies of all notices and motions and would be available for consultation before the parties are first scheduled to appear in court.

Simply providing the Court with continuing jurisdiction should reduce by months the time a child spends in foster care. Providing that the child's placement does not lapse until completion of the child's permanency hearing is vital to ensure that there is not a lapse in a child's placement which could result in ineligibility for reimbursement under Title IV-E of the Social Security Act for foster care for the child. Under this bill, for children freed for adoption, the Court would be required at the conclusion of the dispositional hearing freeing the child (if the court does not immediately proceed to a permanency hearing after the completion of the dispositional hearing) to set a date certain for an initial permanency hearing within 30 days of the dispositional hearing, and which must be completed within 30 days of commencement of the permanency hearing. For all other covered children, the Court would be required to set a date certain for an initial permanency hearing at the conclusion of the hearing where the child was placed. That initial permanency hearing would be required to be held within six months from the date which is 60 days after the child's removal from the home, and would further require the hearing to be completed within 30 days of commencement. Subsequent permanency hearings for all children would be held every six months thereafter.

A date certain for the permanency hearing will obviate calendaring delays in Family Court, permit permanency hearings to occur on time and foster compliance with Title IV-E federal requirements. Currently, in many jurisdictions, permanency hearings are placed on the court calendar on an emergency basis, due to lapsing legal authority. The requirement in the proposal that the date for the initial or next permanency hearing be set while the parties are in Court will keep the case on the Court's calendar and give all the parties notice that the Court will be reviewing the progress made toward reunification. These planned-for permanency hearings will provide a forum for a more thoughtful and substantive review of the issues that gave rise to foster care and that may be creating barriers to reunification or other permanency for the child. This bill also would revise case planning and reporting requirements to provide earlier delineation and review of local district implementation of service plans to achieve permanency for children. What occurs in the early days when a child is first placed in foster care, and the plan for reunification made at that time, are critical to speeding permanency for children. This bill would require that the initial family services plan be completed within 30 days of the child's entry into foster care. This plan would then be reviewed -- and revised if necessary -- 90 days after the child's removal, reviewed again 120 days later to coincide with the scheduled permanency hearing and then reviewed every six months thereafter. This will require greater planning at the critical stage when the child is first placed. The report of the second service plan review would be fresh and available for the first permanency hearing, which would be held at eight months under this proposal.

Similarly, the bill would require the local social services district to prepare a permanency hearing report that would be served with the notice for the permanency hearing. The report would contain information on the health and well-being of the child, including information regarding the child's educational status, the current permanency goal, the steps that the local social services district has taken to reach that goal, the status of the parent, what efforts have been taken to reunite the child with the parent, and the recommended permanency plan. At the conclusion

of a permanency hearing, the Court will be required to issue written findings and an order on ASFA-specific issues. Under ASFA, a petition must be filed to terminate parental rights where a child has been in foster care for 15 of the most recent 22 months, unless a compelling reason exists not to terminate parental rights. Current law in New York State prohibits the application of this standard since the law requires that a parent must have failed for a period of more than one year following the date the child entered care to maintain contact or plan for the future of the child for permanent neglect to be found. The courts have interpreted this language to require one continuous year in placement, a requirement that is antithetical to the spirit and intent of ASFA. This bill would allow a petition for permanent neglect to be filed where the child has been in and out of foster care while the local district has been diligently attempting to return the child home and progress has not been made toward permanent reunification. This bill further would eliminate the requirement that a child remain in foster care placement for one year where there has been a previous finding that no reasonable efforts toward reunification are required, based upon the child having been severely or repeatedly abused.

Section 1022 of the Family Court Act enables a child protective service to seek an immediate order authorizing removal of a child from the home when a child protective case commences. This proposal would require that, when the child protective service applies to a Court for an order authorizing the immediate removal of a child, the court must commence the hearing on the application that day and continue the hearing on successive days until a decision is issued. Additionally, the proposal would mandate an early hearing in every case where a child is removed from his or her home and require the court to address at that hearing the best interests of the child and whether reasonable efforts were made to prevent the removal of the child from his or her home.

To equip the Family Court with more tools to expedite permanency, the bill would also permit the Family Court to authorize mediation and conferencing that may include participation of a child's family members and other adults significant to the child.

This bill further would address the issue regarding lack of enforcement procedures for an agreement that has been made for ongoing contact and communication between the biological parent and the adopted child in surrender instruments or adoption orders. Currently, the Court does not have the authority to enforce these agreements, so this bill would create limited enforcement standards and procedures to provide a means for the Court to address an enforcement application, limited by consideration of the best interests of the child.

Finally, among several other amendments included in the bill to facilitate permanency, this legislation would include a provision to expedite appeals in termination of parental rights (TPR) proceedings by creating an automatic appellate preference in child-related cases without the need for a motion and eliminating other obstacles that currently slow the appeals process. This provision would provide that children do not linger even longer in foster care due to a pending TPR that cannot be finalized until the appeals process is completed.

PART B

Part B of this bill would expand the definition of "aggravated circumstances," a finding of which obviates the necessity that the local social services district make reasonable efforts to return a child home. Under ASFA, one of the areas left to the discretion of the individual states was the definition of "aggravated circumstances." The only aggravated circumstance defined in current statute is where a child has been severely or repeatedly abused. This bill would expand the definition to include additional circumstances, described below. In each case, the change in the law merely would allow the local social services district to make a motion to the court requesting a finding that reasonable efforts to return the child home should be terminated. The respondent still would be afforded the opportunity to object to the motion. The court then would be required, based upon the particular facts and circumstances before it, to determine whether to grant the local social

services district's motion.

This bill would expand the "aggravated circumstances" definition to include a situation where a child has already been placed in foster care based upon neglect, subsequently reunified with his or her parent based upon the local district's diligent efforts to return the child home, but the return home disrupts because the child is subsequently abused. If the Court determines that abuse has occurred and the child is again placed in foster care, the local district should not again be required to attempt to reunify the family. Where the parent states under oath that he or she refuses to take the steps necessary to prepare for the return home of the child, the local district should not continue to be required to attempt to provide appropriate services reunify the family. Finally, under certain circumstances, where a parent anonymously abandons a child five days old or younger, the local social services district should be able to make the application to the Court for a determination that the district need not make efforts to find the parent.

One impediment to child protective investigations is obtaining access to confidential records of mandated reporters, especially medical, mental health and substance abuse records related to the report that may be necessary to make a determination whether there has been child abuse or neglect. The proposal would require mandated reporters to provide their records to the child protective service to enable the child protective service to complete a thorough investigation before a petition is filed under Article 10.

Section 1042 of the Family Court Act currently provides that where a parent defaults in an Article 10 proceeding, the parent may have the default judgment vacated and the matter reopened by submitting an affidavit attesting to the parent's relationship to the child. The Court by law must reopen the matter unless it finds that the parent "willfully refused" to appear at the hearing. This standard for reopening defaults is inappropriately broad. Part B would make the standard for opening a default in an Article 10 proceeding commensurate with the standard found in the Civil Practice Law and Rules by requiring that the parent move to reopen the default judgment within one year of the service of the order of disposition and that the parent present a meritorious defense.

Requiring that the parent come forward within one year and show a meritorious defense imposes a reasonable burden on the parent and prevents the situation where a parent reappears years after permanency has been achieved for the child and reopens a default judgment with ultimately no real defense to the proceeding.

BUDGET IMPLICATIONS:

No significant fiscal impact is anticipated for OCFS and the local social services districts.

Enactment of this proposal would enhance New York State's compliance with federal Title IV-E requirements around timely completion of permanency hearings for abused, neglected and abandoned children. The changes proposed by the bill could save the State and local districts millions of dollars annually in ASFA and Title IV-E penalty avoidance.