

**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 the 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 1 a-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 1 055-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 changes references to "petition" to "motion".

Section 24 of Part A would amend section 1 065 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 to-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 I-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 review-

ing 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 to 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.
