

ADOPTION & SAFE FAMILIES ACT (“ASFA”)

Family Court Act: <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO>:

Article 3 – Juvenile Delinquency

Article 6 – Permanent Termination of Parental Rights, Adoption, Guardianship & Custody

Article 7 – Proceedings Concerning Whether a Person is in Need of Supervision

Article 10 – Child Protective Proceedings

Article 10-A – Permanency Hearings for Children Placed Out of Their Homes

All foster parents and adoptive parents and all in the household over the age of 18 years must be fingerprinted and have their criminal records checked and are not permitted foster or adoptive status if they ever had certain felony convictions.

Placement Orders:

A placement order may be issued at any time while a case is pending. A placement order determines where the child will reside at the time. All placement orders (except for some Juvenile Delinquency placement orders) are limited to one year and then court review is required for any extension.

Temporary Placement Orders for Article 10s, JDs, and PINS: (1) must have the court making a specific finding that “remaining in the home would be contrary to the best interests and contrary to the welfare of the child” and some factual basis for the finding should be referenced. (2) must have the court making a specific finding that reasonable efforts have been made to try to keep the child in the home with some factual basis for the finding referenced – the only alternative is the court finding that no reasonable efforts were possible given the factual circumstances, again with specific reference to the information that the ruling is based on.

No Requirement of “Reasonable Efforts” to reunite child with parent(s):

There is a possibility in cases of severe or repeated abuse, certain criminal convictions, or where there has been prior involuntary termination of a sibling against the parent, for the agency to not offer services to unify the child with the parent(s) and to fast track to Termination of Parental Rights. The agency would file a “no reasonable efforts” motion, arguing that the likelihood of the child going home is so low that reunification is unlikely, so the agency should not have to provide services to the family. The court can deny the motion by finding that (1) reasonable efforts would be in the best interests of the child and (2) reasonable efforts would not be contrary to the health and safety of the child; and (3) reasonable efforts would likely result in reunification in the foreseeable future.

Once such a motion is granted, the time runs quickly for termination of parental rights. The court must hold a permanency hearing within 30 days and determine the appropriateness of the

agency's permanency plan – if the child will be returned to the parent, if the child should be placed for adoption and a termination petition filed, if the child should be referred for legal guardianship, if the child should be permanently placed with a fit and willing relative, or if the child should be placed in another planned permanent living arrangement based on compelling reasons. The agency must take steps to finalize the permanency plan including filing a termination petition in accordance with SSL Sect. 384-b. Health and safety of the child are the paramount concerns in determining reasonable efforts.

Thus, if a parent wants to retain custody of a child, it is important that the parent request services and cooperate with the agency. Because the agency is not required to provide services, it may be that the parent has to pay for them.

There are three stages of hearings: fact-finding, dispositional, and permanency.

In fact-finding, the court determines, using the standard of “clear and convincing evidence” as to whether the child has been abused or neglected and by whom. In dispositional, the court determines, using the standard of “best interests of the child,” what steps are to be taken to address that abuse or neglect, and who shall have custody of the child in the interim. Permanency hearings, which address the permanency plan for the child, must be held for all children who remain in care except for JD placements in secure detention, secure placement facilities or camps.

All Article 10 (and voluntaries) orders must have a visitation plan in them, a direction that the agency inform the parent of the service plan review dates and of their right to attend these reviews and to have counsel, a representative, or a companion present and must also order that the agency provide the parent with a copy of the service plan and the court order.

All Article 10 (and voluntaries) orders must contain a notice that the agency may be required to file a Termination of Parental Rights (TPR) petition if the child remains in care for 15 out of the most recent 22 months.

Article 10, JD and PINS Dispositional Orders which place a child: (1) The court must make a specific finding that “remaining in the home would be contrary to the best interests and contrary to the welfare of the child with some factual basis for the finding referenced. (2) The court must make a specific finding that reasonable efforts have been made to try to return the child to the home if the child had been under a temporary placement order with some factual basis for the finding referenced. In a case in which return to the parent is not the current goal, then there must be a finding that reasonable efforts were made to achieve whatever the goal was prior to the dispositional order. (3) The agency must demonstrate that it had direct input to the court about the placement alternatives, particularly in situations where the court is ordering a specific placement. The order must state that the agency presented its position to the court regarding the specific placement appropriate for the child even if the court did not agree.

A permanency hearing must be held before the end of the initial 12 months of the child's placement, calculated as starting at 60 days after the removal from the home or a finding of abuse or neglect, whichever is sooner. An agency may file a TPR petition in conjunction with the permanency hearing. All subsequent permanency hearings are held 12 months after the former. All foster parents, pre-adoptive parents and relatives providing care are given notice to appear and an opportunity to be heard at permanency hearings.

Permanency hearings address what the permanency plan is for the child: If the child is to be returned to the parent, if the child should be placed for adoption and a termination petition filed, if the child should be referred for legal guardianship, if the child should be permanently placed with a fit and willing relative, or if the child should be placed in another planned permanent living arrangement if there are compelling reasons to not choose the prior permanency goals. If the goal is reunification, the reasonable efforts being made to reunify the child to a safe home, or if the goal is not reunification, what reasonable efforts are being made to achieve permanency. If the child is over 16 years old, independent living service needs are to be assessed. If the child is placed out of state, the need for continued out of state care are to be assessed. Article 10: The court must also determine the appropriateness of the agency's permanency plan: Have any circumstances changed? Does the service plan require any review, adjustment, or modification? Has the service plan been complied with by the parties? Is an extension consistent with the proper permanency goal? Would the child be at risk of abuse or neglect if returned home? Voluntary placement: Review what services have been offered. Review alternatives offered if return home is unlikely. Review efforts made in the child's best interest.

All Article 10, JD and PINS permanency orders: (1) must reflect that the court was given the permanency plan that the agency had for the child as well as the current service plan for the child; (2) must indicate that the court has reviewed the agency goal and service plan for the child; (3) must contain a permanency goal specifically chosen by the court – either the same goal or a different one; (4) must reflect that the foster parents or caretakers of the child were noticed to the permanency hearing and given an opportunity to appear and present any information to the court; (5) must have the court making a specific finding that reasonable efforts have been made, with some factual finding for the finding referenced, unless there had been a prior finding that no reasonable efforts were required. If the prior goal was not return to parent, then there must be a finding that reasonable efforts were made to achieve whatever the goal was prior to the dispositional order. If there were two or more prior goals during the past year that are being reviewed, the court must find that the agency pursued all goals with reasonable efforts. In any situation where the child's goal has been TPR, even where the TPR has not yet been resolved, the court must make a finding that the agency has been seeking adoptive resources. (6) must demonstrate that the agency had direct input to the court about the placement alternatives, particularly where the court is ordering a specific placement. The order must state that the agency presented its position though the court did not agree. (7) If the child is over 16 years old, regardless of what the plan is for the child, the order must reflect that the court reviewed the services provided to the child to assist with independent living. (8) If the child is placed out of state, the order must reflect that the court reviewed the necessity of the child being placed out of state. In addition, for both Article 10 and Voluntary Placement: (9) the visitation plan; (10) a direction that the agency inform the parent of the service plan review dates, their right to be at

the service plan review, and that they may be an attorney or other representative to the service plan review; (11) a copy of the court's order and the service plan to be given to the parent; and (12) the court can order the agency to file a termination petition.

Considerations:

A parent can cooperate with services and still fight the neglect or abuse petition. Fighting should not stop the parent from fixing the problem, as if the parent loses at the fact-finding hearing, time is running out. Remember that any statements made by the parent while getting services are part of the agency's record.

Check into a relative taking the child, so there will be some contact between the child and the parent in the future. In other words, the child is not placed and later adopted by strangers.

A parent can voluntarily and conditionally surrender a child. The surrender can be conditioned on adoption by a particular person(s). The agency must then notify the parent if that particular person decides not to adopt, and then the conditional surrender can be voided.

A parent can condition for visitation of 1-2 times per year; must state that that condition will survive the adoption.

Termination of Parental Rights Petitions:

The agency is required to make "diligent efforts" to help the parent. The parent needs to visit the child, take advantage of services, and make doctor appointments. The parent is racing against a clock, so there should be an effort on the parent's part to get the child home as soon as possible. If the child is placed with a foster parent, it is important for the parent to not see the foster parent as an enemy, but as someone who is taking good care of the child while the parent works out his/her problems.

It is mandatory for the agency to file a termination of parental rights petition once the child has been in foster care 15 out of the last 22 months. The time is counted from a finding of abuse or neglect by the court, or after a child has been in care 60 days. The petition is therefore filed no later than 17 months after the child was removed from the home.

A parent may argue for a suspended judgment of neglect to keep the time from running. Gives the parent a last chance. Need to show the recent efforts that the parent has made.

A Termination of Parental Rights trial takes a lot of time and energy, and can be appealed by the parent. During the pendency of the appeal, the child cannot be adopted.

Freed Child Orders: (1) must reflect that the agency has been engaging in reasonable efforts to achieve permanency for the child preferably with specific factual references. (2) must demonstrate that the agency had direct input to the court about the placement alternatives, particularly where the court is ordering a specific placement, and where the court did not agree, that the agency presented its position to the court. (3) If the child is over 16 years old, regardless of what the plan is for the child, that the court reviewed the services provided to the child to assist with independent living. (4) If the child is placed out of state, that the court reviewed the necessity of the child being placed out of state.

The venue for filing adoption is the county where the parents reside. For out-of-state parents, venue is the county of principal place of business of the government or private adoption agency.