New Child Welfare Legislation

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OH NO!!!

Not more stuff to DO???

BUT….. We don't have enough:

money
time
workers
judges
lawyers

There is **good** news - most of this will provide more options and more options is almost always better

BE HAPPY

- More options for courts and agencies to offer and assist children and families!

- MORE OPTIONS + GOOD DECISIONS =

  BETTER OUTCOMES FOR CHILDREN

  AND FAMILIES

OK…….tell me what we got

- Kinship Guardianship Assistance Program-
  Chpt 58 of the Laws of 2010
- Parental Incarceration/Residential Substance Abuse Treatment *MAY* be a compelling reason to justify not filing a TPR and some wording changes in perm neglects and abandonment TPRs that are filed
- Restoration of Parental Rights in some situations where freed child not adopted
- Multiple Trial Discharges and Voluntary Re-placements in Foster Care for 18-21 year olds

Also – some other stuff

- Chapter 41 Laws of 2010 – Statutes everywhere must use phrase “attorney for the child” instead of “law guardian” as of April 14 2010
- Sexually Exploited Children modifications – SSL § 447-a modified in the descriptions and details of long term safe houses for sexually exploited children, removed Art. 10 children from the definition, details regarding notification of parents, clarification on placement options
- Local districts must make info on “child only grants” and other services available to relative caregivers who are caring for children outside of foster care

Subsidized Kinship Guardianship

Subsidized Kinship Guardianship – New SSL §458

Will allow RELATIVES to APPLY to local districts for an ongoing subsidy outside of foster care or adoption – then move the court to be appointed as a guardian

- Must be a relative who has child as a fully certified or fully approved foster parent
- Must be with relative for a minimum period of time
- Must fit the criteria for this to be the appropriate permanency for the child

What kind of cases will have this option?

Child must be under 21 and have been placed in **foster care before 18** – must be foster care, not an Art. 6 or Art. 10 direct custody arrangement – but can be a foster care under an **Art. 10, a voluntary under SSL or a PINs or a JD placement**

Foster parent of the child **must be related, by any degree**, to the child by blood, marriage or adoption and must be the child's **CERTIFIED or APPROVED** foster parent for over **6 months** before any application

Art. 10 - the FF and 1st PH must be completed, all others, 1st PH must be completed

Must first APPLY to the local district

- LOCAL DISTRICT MUST APPROVE FIRST – Court **cannot order until after** local district's approval of the subsidy
- Local District must consider:

❖ Return home or adoption not appropriate for child – there are "compelling reasons" why these are not in child's interests

❖ Child has strong attachment to relative and relative has strong commitment to permanently care for child

Local District :

- Child has been consulted - over 18 must consent
- Cannot consider the financial status of the relatives
- Cannot have already applied to the court (may be VERY helpful to know if court will eventually agree)
- Must have had criminal record check of all in home over 18 , SCR checks here and in other states for last 5 years
- THAT THIS IS IN CHILD'S BEST INTERESTS

If DSS/ACS approves, what does relative "get" with this subsidy?

- Relative can now move the court for the guardianship status and if court grants it, child exits foster care and relative will continue to get a monthly subsidy for the child
- Relative will get up to $2,000 to pay for one-time expenses of guardianship proceeding
- Relative becomes child's sole guardian – local district and court end involvement with child

QUESTIONS

- Can the one-time expenses include legal fees and can they be paid directly to the lawyer like in adoptions? YES
- Some districts only pay up to 75% of the subsidy for adoptions by adoptive families of certain means – can districts choose to do that as well with these guardianships? YES
- If the local district denies a relative's request for this option, can the relative do anything? YES –
  - they will have a limited fair hearing right with OCFS

MORE QUESTIONS

- **Will these subsidized guardianships provide medical insurance?** YES – if IV- E then would cover, or if guardian cannot provide insurance, then district shall
- **When would the subsidy start?** Once there is an agreement between the district and the relative, it will start when the court orders the guardianship and the child is discharged from foster care
- **How long would they get the money?** Until the child is 18, except if the child was 16 or older when it was granted , then to age 21 as long as the child is in school, employed, in a program to prepare for employment or medically cannot. Money would stop if guardian no longer had legal authority such as if the guardianship was revoked or suspended or if the guardian was no longer supporting the child
- **Any other services?** YES – independent living services, education and training vouchers

What are the legal procedures after the district approves the subsidy?

- FCA §1055-b adds the ability of a relative to file for guardianship as per SCPA Art. 17
- FCA § 661 (C) – If the child's perm goal under an Art. 10 or Art. 10-A is referral for legal guardianship, then the relative files in front of the court that has been handling the case and it can be consolidated with the dispo or the next PH
- SCPA § 1702 -7 clarifies same if done in Surrogate Court

Court decision

FCA §1055-b and FCA §1089-a will require Judge to consider child 's best interests including:

- Permanency goal of the child – that there is a compelling reason why return home and adoption are not appropriate for the child
- Relationship between child and relative
- DSS/ACS has approved subsidy
- FF and 1st perm hearing are completed
- Will be a safe and permanent home
- Must consult with the child, if 14 or over must ask their preference, if over 18 must have their consent

Court procedure

- Can be in the dispo or perm hearing – remember if in the dispo, the 1st perm hearing must also have been completed
- If parents do not consent – must be extraordinary circumstances, if any other party does not consent, then best interests (remember that DSS/ACS would have already consented in that they approved the subsidy)

Also in the order

- Court **MUST** order that ACS/DSS and child's attorney be notified and be made parties to any and every subsequent proceeding to modify the guardianship
- FCA §1089(a) Court **MAY NOT** order anything further under the Art. 10 – so no supervision or services can be ordered for the guardian or the parents or respondents (guardian may be eligible for preventive but court cannot order district to provide)

THIS IS AN IMPORTANT CONSIDERATION!

What exactly is this new guardianship power?

- Guardian has right to physical custody of the child and the right to "make decisions, including issuing any necessary consents, regarding the child's protection, education, care and control, health and medical needs"
- Can we do a "loaded" order like with Art. 6?
- Do parents still have parental rights? Can they still seek visitation and can they move to modify/cancel this guardianship in the future?

The answer seems to be YES to all these questions

Anything else? When can we start?

- OCFS is to do annual reports
- Cannot start until feds approve this (for IV-E purposes) and until **April 1, 2011**
- How is it being paid for? Federal funds will supply IV-E and medical insurance if child eligible, any non-federal funds needed were not described in the bill and that appears to be why we must wait until April 1, 2011

TPR and Incarcerated/Inpatient Parents

Chapter 113 Laws of 2010 currently in effect!

- Provides a new reason that a local district may choose not to file a TPR at 15/22 months as well as some things court must consider if TPR filed
- Local district need not file against a parent even though the 15 month time frame has arrived if the parent is or was incarcerated or in an inpatient facility for substance abuse
- The described parent's situation is not a defense to a filed TPR, this only provides a reason for a district to choose not to file what they would otherwise be legally obligated to file

AND…

Does it change the TPR grounds?

- It does not add any new grounds or take away any old grounds

But TPR grounds have been affected:

- In perm neglect TPRs the court is to consider any "particular constraints" that limited the family contact or availability to services
- In abandonment TPRs the court MAY consider "particular delays or barriers" that parents may have had in letting agencies know where the parent is located
- Haven't courts always done that? It may take caselaw to discern it this is a significant change.

At the 15 month mark, the district can choose not to file a TPR if

- The incarceration/inpatient status is a significant factor for why child is in foster care AND
- The parent has a meaningful role in the child's life based on letters, phone calls, visits and communication with the child, work with the agency and other persons in the child's life to comply with the service plan and work on the relationship and it is in child's best interests to have parent remain in child's life AND
- There is no other compelling reason

Could court order this exception?

- No statute or current case law that court can order an agency NOT to file a TPR and this is not a defense – although can make court's position clear by ordering specific goal
- Court can direct agency to "undertake steps to aid in completing" an assessment re the use of the exception – eg., the agency is supposed to be gathering info on this possible exception from various individuals
- Could become an issue in a litigated PH

Anything else in this bill?

- OCFS is to prepare information re parent's legal rights in these situations and local districts must provide this to parents and where possible this should include information on services available in the community where the parent will return
- SSL § 409-e allows consultation on service plan reviews to be done by video/teleconferencing
- The service plan must reflect the special circumstances and needs of the family if a parent is incarcerated or an inpatient for substance abuse

Restoration of Parental Rights

Restoration of Parental Rights

- S 3868/A 8524 – passed both houses, not yet signed (or vetoed) by the governor
- Allows Family Court to reinstate the parental rights of a parent after a TPR and return the child to the custody and guardianship of a birth parent or parents
  – new FCA § 635- 637

WOW! When would the court be able to do that?

- TPR was over **2 years earlier** and was on abandonment, mental illness, mental retardation or permanent neglect
- Child is **at least 14**, still in foster care and does not have a goal of adoption
- **Clear and convincing proof** that it is in the child's best interests—presented by the person petitioning for the restoration

Would everyone have to agree to such a motion?

- The child, the parent, the child’s attorney, the agency and the court in most cases (not clear if both parents would have to agree)
- The child’s attorney, the agency with custody of the child or the respondent parents could file the petition to restore and everyone else must be served as well as the respondents’ prior attorneys
- **Court can do it over the district’s objection where person filing motion proves clearly and convincingly that the district is withholding its consent without “good cause”** (no further definition)

Restoration of Parental Rights

- Case continues with the court that had been doing PHs of child or Judge who did TPR, same attys if possible
- The original findings of fact remain
- Court would have option of "provisionally" granting the restoration for a period of 6 months with mandated agency supervision, reports
- If the governor signs this, it would be effective 90 days after he signed
- Could apply to current cases at that point
- In PHs on freed child, court could "recommend" that a petition be considered

Trial discharges of youth and voluntary return to care

Trial discharges of youth and voluntary return to care

- A8504/S4388 – Passed both houses, not yet signed (or vetoed) by the governor
- If signed it would allow:

❖ Family Court to order ongoing and repeated “trial discharges” of youth over 18 until age 21 with their consent

❖ Allow youth between 18 and 21 who within the last 24 months had been discharged from foster care at their own request, to move to be returned and replaced in foster care – ACS/DSS must notify youth of this right if they do leave after 18 – NEW FCA § 1091

What would be the reason to do ongoing trial discharges?

- Some youth still need assistance and supervision but are not willing to actually physically stay in a foster care setting – DSS/ACS still has care and custody but child not in a foster care setting
- Keeps the door open for the youth to return to the foster care setting without any “replacement” process
- A trial discharge may maintain IV-E status in some circumstances
- Some courts have been doing these for awhile and have found them quite helpful
- Will not work if youth will not consent, can’t be forced

Under what circumstances could a youth voluntarily return to care?

- A youth who has left care after age 18 as he/she would not consent to remain
- The youth is not yet 21 and has been out of care for less then 24 months
- Youth makes motion or brings OTSC and can have help of former attorney who will continue to represent
- DSS/ACS can also do a motion or an OTSC with the youth's consent

Voluntary return to care

- Court finds compelling reason that youth has no reasonable alternative to foster care, youth consents to go to educational or vocational program and return is in child's best interests
- Both youth and local district consent to youth's return **EXCEPT court can do it over local district objection if court finds local district is "unreasonable" in its refusal to consent, must make a finding in writing – unreasonable is simply defined as the court making the findings required to make youth eligible**
- **Court can order the return to care to be immediate if compelling reason why that is in youth's best interests**
- Court must set up and do PHs again
- NOTE – very unlikely that youth's replacement would be IV-E eligible (will be working on this!!)

Voluntary return to care

- If youth has left and been voluntarily returned once and then leaves again, youth can make a second motion to return a second time but not again and if it is the second time, the court must make all the same findings again and must consider the youth's compliance with the court's previous order including the participation in an educational or vocational program
- Definition of "destitute child" will include a youth who has been returned to foster care
- Definitions for mandated preventive services will include a youth who has left foster care between 18 and 21 and for whom preventive services may help avoid a return to foster care

When could we do these things?

- Many courts do ongoing trial discharges now but this law would clarify that they are permitted and would be effective 90 days after the governor signed it
- The voluntary return to care provision would also be effective 90 days after the signature and would seemingly apply to youth who had previously refused to remain in care if they otherwise qualify

Seems like lots of new stuff

- Yes – lots of child welfare legislation did pass this year although a very significant amount of funding was cut to local districts which may affect these new laws
- Watch for info on what was signed or not by the governor and watch for more forms and regs from OCFS and new court forms as well as changes from OCA !!
- REMEMBER: MORE OPTIONS + GOOD DECISIONS = BETTER OUTCOMES FOR CHILDREN AND FAMILIES!