2006 – New Child Welfare Legislation – By Margaret A. Burt, Esq.

Chapter 437 of the Laws of 2006 - PERMANENCY TECH AMENDMENT BILL
S8435/A11792-A – Effective July 26, 2006

The most needed legislation this session was accomplished with a collaborative effort. It is meant to resolve some of the questions on last year's Permanency Law – Chapter 3 of the Laws of 2005. Some of the highlights include:

- **VERY IMPORTANT :** The issue regarding the "discharge" to parents that is permitted upon the court's order between permanency hearings has been resolved! There is clarification of the issue of "final discharge vs. trial discharge" - AND a statutory definition of "trial discharge"! When the child's goal is return to parent - the new law allows the court to grant an order to do a "final discharge" of a child to the parent between 2 permanency hearing dates upon ten days notice to the court and the law guardian. If the matter is not restored in the 10 day notice period, then the child can be sent home to the parent on a "final discharge" and the next permanency hearing dismissed and the order ended. The new bill further states that a local district also has authority to send a child home on a "trial discharge" UNLESS the court has ordered that it does not have that authority or conditions the trial discharge upon some event. Trial discharge is defined as DSS sending the child home to the parent physically but keeping care and custody of the child and keeping the next scheduled permanency hearing. When the child is older and is expected to age out of foster care with a goal of APPLA, the agency will also have the ability to "trial discharge" the child unless the court has prohibited it or conditioned it. This would mean that the child is physically discharged from care but remains in the care and cusotdy of the child agency and the permanency hearing date remains in place. These sections provide great new clarification and options for local districts. Although the use of "trial discharges" is still a policy consideration for local districts, a clear legal definition of the practice will be very helpful. It would be a great idea to discuss these new options with your court to help fashion local policy!
- **Another very important new provision is** that the court, on motion by any party or on it's own, can issue an order to dispense with the notice to former foster parents who had the child in their home for 12 months! Many local workers asked for this provision and it would make sense to ask for such an order to be an "ongoing" one in many cases.

ALSO:

- The timing of permanency reports after suspended judgements on permanent neglect terminations will be changed. Unless the child is being freed for adoption after a violation of a suspended judgement, in which case the first freed child review will be immediately or within 30 days, if the child remains in care, then the already previously set permanency hearing date will remain.
- Siblings who come into care at different times but all under Article 10 or voluntary placements will have their permanency hearings dates coordinated by having the new child's date be scheduled with the current date for the sibling(s) placed earlier.

- There are several sections that now include a listing of what the court is to place in a permanency order – sections that were just inadvertently left out in the original Permanency Bill.
- Both violations of suspended judgements on Art. 10's and violations of supervision orders on Article 10's will toll the order until the court resolves the violation.
- There is clarification that a Voluntary Placement under SSL 358-a and a placement after a violation of a supervision Art. 10 order will require the court to set the 8 month date for the first permanency hearing. It is important to remember that voluntaries are now only 8 months long and then if the court orders the child to remain in care at the first permanency hearing, the placement becomes one under FCA Art. 10-A.
- The language clarifies that the permanency hearings are to be completed within 30 days of the scheduled date certain and deletes the language that the hearing is to be completed within 30 days of the "commencement" of the hearing.
- Once a parent has lost or surrendered parental rights, they no longer receive any report of any permanency hearing or freed child review.
- There are some changes to the language regarding appointment of counsel for indigent parents on appeal.
- Service plan dates on JDs and PINS placed with local districts are in moved in line with Art. 10 dates –BUT there is NO CHANGE in the permanency hearing and extension process for JDs and PINS placements.
- The automatic stay provision of FCA 1112 where the court orders local districts to return a child is extended to include the court doing so in a permanency hearing on an Art. 10 placed child.
- There is more clarity regarding the wording in the order that the court signs after an adoption of a child that was conditionally surrendered.

THE CPS "ACCESS BILL" S8344/A11852-A

Both houses passed a bill that drastically modifies FCA 1034(2) to allow 24 hour ability to obtain a court order to interview and observe children during an investigation! The bill can be a bit tricky to weed through so please read it carefully.

Essentially the bill greatly enlargens FCA 1034(2) by setting up 2 different legal tests for obtaining an "access" order during a CPS investigation. The bill clarifies that these orders can be obtained during an investigation into a CPS report, even though no indication or court petition may be contemplated yet. Further it clarifies that these orders can be obtained 24 hours a day via appearance in court or by phone or in person after court hours (OCA would have to set up rotating assigned Family Court Judges for after 5 and weekend requests) It would seem that obtaining such an order would be an infrequent occurrence, as most parents do let the worker see and interview the child, and others would perhaps allow access once being told of the worker's ability and intention to seek such an order. Also, it seems unlikely that there would be many occasions to use

this after court orders as many such situations could wait until the morning. But the thought is that this would be some legal clarity that in certain instances a child must be produced for an interview during an investigation.

To obtain an order to "produce the child" for an interview outside the presence of the parent or to "observe the condition" of the child – the test would be "reasonable cause to suspect that a child or children's life or health may be in danger". The caseworker would have to inform the parent that they are able to seek such an order and if they do choose to seek the order, the worker MAY contact law enforcement who SHALL respond, if they are contacted and who will then wait at the scene (the police could going into the house if they have their own warrant or other constitutionally permissible reason) until the order issue has been resolved. The bill details the factors the court can consider in granting such an order, including the nature of the allegations and known history with the family.

To obtain an order to "enter the home in order to determine" if the children are there or to "conduct a home visit and evaluate the home environment" the test would be "probable cause to believe that an abused or neglected child may be found on the premises". The higher level of proof here reflects the legislatures concern for 4th amendment issues. The current reference to the "criminal standard of proof" is deleted and the other issues as above such as 24 hour access to the court for this type of order, prior notice to the parent, law enforcement response etc are the same.

ALSO:

- S 8096/A10447 – would require Supreme Court to appoint counsel for indigents in any action in which they would have been given counsel in Family Court – this could affect those of you with IDV courts. It will be effective upon the Governor signing it.
- A 08656-A – would provide a process by which adopted children whose adopted parents die when the child is still between 18-21 can have the adoption subsidy still paid to a guardian, rep payee, or in some cases to the child himself. This bill would be effective immediately and will apply to any children who are still under 21 and would have been eligible if the bill had been law when the adopting parent died.
- Chapter 185 of the Laws of 2006 - – the "one family/one judge" law – requires that the surrender, TPR or adoption of a child who has been in foster care be filed in the same court and if practicable before the same Judge that has been handling the foster care process, if the matter has not been filed before the same court, the Judges are to communicate the situation and defer to the decision of the Judge who had been handling the matter – this could affect those of you who use Surrogate's court to do adoptions or to those of you who have multi Judge benches where cases are not continuously calendared before the same Judge. This law is effective October 24, 2006 and is applicable to any surrender, TPR or adoption filed after that date.
- S 07644 – the Child Advocacy Center bill – this bill authorized OCFS to encourage setting up CACs to interview and examine children and to help coordinate investigations for both criminal and civil procedures. The bill details basic qualifications for CACs and permits CAC to be used for investigative functions as well as medical and mental health treatment. Records can be disclosed for purposes

of investigation, prosecutions and or adjudication in any court. This bill would be in effect 180 days after signing.

- S 6681 – "foster and adoptive parent nationwide criminal records check" - this bill authorizes OCFS to make national criminal records checks on foster and adoptive parents. This bill is in effect 120 days after signed.
- S7042A/A 11854 – the "dual response" bill – this bill provides for SCR to advise the local district in any report IF the report involved allegations of physical abuse, sexual abuse, death or in any event where neglect is alleged and there are allegations physical harm from a mandated reporter and there were 2 other reports regarding that household in the prior 6 months that were indicated or pending. If a report is made in one of the abuse situations, the local district will have to notify law enforcement and there will have to be a response of a multidisciplinary team or some other coordinated response. If the report is made in the neglect situation with the two priors, the local district will have to decide if it is necessary to contact local law enforcement. Where local law enforcement is contacted, they will have to be involved in the investigation by a multidisciplinary team or by working jointly. There is a "carve out" option that this "dual response" does not have to be made where the district has a multidisciplinary team with it's own protocols that has been approved by OCFS. This bill would be effective 120 days after it is signed.
- A11582 – the "TPR homicide" bill – enlargens the "severe abuse TPR" definition to include a parent who has been convicted for murder 1st or 2nd degree or manslaughter 1st or 2nd degree or attempted homicide of the other parent or of another child they were legally responsible for (there is already one for conviction of murder of the parent's own child) This would mean that if there was a murder conviction and the child(ren) were in foster care or Art. 10 custody, that DSS could first seek a "no reasonable efforts" order under FCA 1039(b) and then, without the need for any time frame, file a summary judgement motion for TPR. This would be effective 90 days after signing.
- Chapter 320 of the Laws of 2006 - amends the Penal law definitions of incest and therefore amends the definition of sex abuse. The definitions of incest now include 3 different degrees. Effective November 1, 2006
- Chapter 215 of the Laws of 2006 – amends Penal Law and makes maximum periods of orders of protection under penal law longer – 8 years for felonies, 5 years for misdemeanors
- Chapter 110 of the Laws of 2006 - "Cynthia's Law" – amends the Penal Law to create a new crime called Reckless Assault of a Child – a Class D felony for a person more than 18 to recklessly cause serious physical injury to a child under the age of 5 by shaking, slamming or throwing the child so as to impact the child's head upon a hard surface. This law is effective November 1, 2006.
- S7660-A – a bill that would require that mandated reporters have a two hour training prior to receiving a license and be updated with a two and a half hour training every 2 years. Effective 120 days after signing.
- A11571 – a bill that would require OCFS to work with State Education and look into setting policy around educational neglect and setting model protocols for investigation. This bill would be in effect as soon as it is signed.

- S1626-A/A5058-A – a bill that would require the DA to notify CPS of criminal convictions relative to assault, homicide, sex offenses, abandonment, non-support and EWOC where the victim was a child. This bill would be in effect 30 days after signing.
- S7816 - this bill would require CPS supervisors to have specific qualifications – a college degree or 3 years relevant human services experience. CPS supervisors would also have to take a CPS supervisory course within 3 months of being hired and annual in service training. All CPS workers would have to have 6 hours of in service training every year starting in their second year. This bill is effective within 90 days of signing.
- S7643-A/A11636-A – the "CHAMP" bill – OCFS to create a network of medical providers to educate and mentor on child abuse and neglect issues. This bill would be in effect immediately.
- Chapter 372 of the Laws of 2006 – "no dual representation" – this law prohibits an attorney or a law firm from representing either a foster care or adoption agency and an adoptive parent or birth parent. It is effective June 1, 2007.
- Chapter 253 of the Laws of 2006 - – the "pet order of protection" – this new law allows courts to add language to orders of protection in all cases – JD, PINs, Art. 10s, paternity, custody, family offenses cases – that a person cannot intentionally kill or injure a "pet" or "companion animal" ("farm animals" are excluded…….) This bill is effective July 26, 2006

Some new relevant Fed law:

- Adam Walsh Child Welfare Protection and Safety Act of 2006 – expands "Megan's Law" to expand sex offender registration to include JDs over 14 if they are responsible for actions similar to aggravated sexual abuse, also requires foster and adoptive parents to be screened with national criminal databases and state child abuse and neglect databases, creates a national registry that states have option to join of substantiated child abuse and neglect reports - Effective 10/1/08 (NYS law will need to be modified)
- Safe and Timely Interstate Placement of Foster Child Act of 2006 (Public Law 109-239) States must prepare and return homestudies in interstate cases within 60 days of receiving a request. States will receive $1,500 incentive payment for every interstate homestudy completed and returned within 30 days. States should use the Parent Locator Service to assist in locating absent parents. States cannot prevent agencies from contracting with private agencies to conduct interstate homestudies. Foster parents and relative caregivers have a "right" to be heard in foster care proceedings – Effective 10/1/06 (NYS law will need to be changed)