

# ADMINISTRATIVE DIRECTIVE

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES  
40 North Pearl Street  
Albany, New York 12243  
Cesar A. Perales, Commissioner



TRANSMITTAL NO: 87 ADM-23

DATE: May 4, 1987

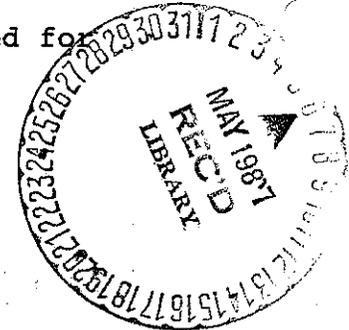
DIVISION: Family & Children's Services

TO: Commissioners of Social Services  
Directors of Authorized Agencies

SUBJECT: Court Reviews for Children Freed for Adoption

**SUGGESTED DISTRIBUTION:**

Directors of Social Services  
Legal Staff  
Children's Services Staff  
Staff Development Coordinators



**CONTACT PERSON:**

All inquiries regarding this release should be directed to Fred Cantlo, Regional Director, Metropolitan Regional Office, telephone 212-488-3485; John O'Connor, Regional Director, Eastern Regional Office, telephone 518-473-1095; Karen Schimke, Regional Director, Buffalo Regional Office, telephone 716-847-3145; Frank Petrus, Regional Director, Western Regional Office, telephone 716-238-8200. Any systems related questions should be directed to Gerald Seeley, Bureau of Services Information Systems by calling toll-free 1-800-342-3715, extension 4-9461.

**I. Purpose**

The purpose of this directive is to advise social services districts and voluntary child care agencies of the provisions of Chapter 902 of the Laws of 1986. This Chapter authorizes the Family Court to review the placement status of children freed for adoption on a regular basis and requires authorized agencies

**FILING REFERENCES**

Previous ADMs/INFs	Releases Cancelled	Department Regs.	Social Services Law and Other Legal References	Manual References	Miscellaneous Reference
81 ADM-53		421.24			
85 ADM-23		430.12(e)(2)	22.5 384-b 409-f		87 Ad 2d 435
85 ADM-53		430.12(e)(3)	153-d 392 442		
		430.13	358-a 398.6(h)		
			372.b.1 398-b 384		
			Title 9, Article 6		
			Article 3,7&10 of FCA		
			FCA 249		
			753 of Judiciary Title		
			2 Article 7 of DRL		

to file petitions for such review. Furthermore, other provisions of this Chapter grant the right to a fair hearing to prospective adoptive parents on the grounds of failure of a social services official to provide them with adoption services and assistance.

This directive will also serve as notice to the districts and voluntary agencies of the Department's intention to withhold reimbursement for the care and maintenance of a child free for adoption if the Department finds the district to be out of compliance with Section 153-d of the Social Services Law with regard to statutory based court reviews for such children pursuant to Section 392 of the Social Services Law.

## II. Background

Section 392 of the Social Services Law provides for Family Court reviews of the status of foster children after eighteen months in placement. Subdivision 2-a of Section 358-a of the Social Services Law, provides for foster care reviews to be held earlier than otherwise required if the Family Court so orders pursuant to its authority to exercise continuing jurisdiction. Subsequent foster care review hearings must be held at least every twenty-four months pursuant to Section 392.10 of the Social Services Law.

Section 1055 of the Family Court Act requires the filing of a petition to extend a foster care placement for any child placed in foster care pursuant to a child abuse or neglect matter. Such placement may not be continued or extended pursuant to Section 1055 of the Family Court Act except upon a hearing held concerning the need for extending or continuing the placement. Such placement may be for an initial period of eighteen months and may be successively extended for additional periods of one year.

The Family Court may also place a child and review and extend a placement pursuant to Section 756 and 756-a of the Family Court Act (PINS) and Section 353.3 and 355.3 of the Family Court Act (JD's).

For any child in placement pursuant to those sections of law cited above, once such child is freed for adoption, the Family Court's authority to review the status of certain of these children has been brought under question. The Appellate Division of Supreme Court, in the Matter of Walker (87 AD2d 435), found the Family Court retains continuing jurisdiction to review the status of children free for adoption. In this particular case the children had been placed out of state and discharged from foster care. However, the Court of Appeals reversed this decision based on the fact that "Family Court has the right - indeed, the obligation - to review ongoing foster care, under Section 392 of the Social Services Law, not foster care which has already been terminated." It should be noted that the Department's position on these matters has been that where foster care payments are made even where a child is in a preadoptive situation, a 392 judicial review is required. Furthermore, there is a legal question as to the appropriateness of a local district considering a child discharged prior to adoption. Pursuant to Social Services Law 398.6h it is the responsibility of the local Social Services Department to "supervise children who have been cared for away from their families until such children become twenty-one years of age or until they are discharged to their own parents, relatives within the third degree or guardians, or adopted."

Further confusion, surrounds the appropriate court review for children freed for adoption who entered foster care pursuant to Articles 3, 7 or 10 of the Family Court Act. Some local Social Services districts have followed a 392 cycle while others have continued to follow the relevant statute underwhich such children originally entered care. Clearly a straight-forward statutory response was needed to clarify the requirements and timetable for court reviews for the population of children free for adoption in New York State.

Regulations implementing the Child Welfare Reform Act of 1979 require that a child be placed in an adoptive home within 6 months of becoming free for

adoption (18 NYCRR 430.12(e)(2) and for legally free children who have been placed in an adoptive home, but whose adoptions are not yet final, such adoptions must be finalized within 12 months after the child is placed in an adoptive home (18 NYCRR 430.12(e)(3). Because delays can occur for a number of different reasons at both stages of the process, bringing such cases to the attention of the Family Court at a specified and timely basis may expedite the adoption process and enhance the chances of permanency for these children by removing barriers either to placing the child in a prospective adoptive home and the adoption of that child or to the adoption of a child already in placement in a prospective adoptive home.

In recent years the legislature has enacted various provisions of law giving Family Court a larger role in reviewing, ordering and monitoring the provision of services by authorized agencies. Chapter 872 of the Laws of 1984 required that before Family Court can approve a child's placement, it must determine that reasonable efforts were made to prevent the placement of a child into foster care. In order to make a determination of reasonable efforts the Court is required to explore, among other things, what preventive services were provided by the authorized agency to the child and family to prevent placement. (See 85 ADM-23)

Chapter 808 of the Laws of 1985 contained provisions which specifically allow the Court to order and monitor compliance with such orders which may impose foster care planning requirements on authorized agencies. Furthermore, Chapter 808 of the Laws of 1985 required parents or guardians to be advised of their right to supportive services, including preventive services and permits parents or guardians to request a fair hearing if an agency failed to provide such services, subject to the terms of the voluntary transfer agreement. (See 85 ADM-53) With the passage of Chapter 902 of the Laws of 1986, the Legislature has further increased the Court's focus on services, by extending such focus to include the provision of adoption services.

Finally, the Child Welfare Reform Act of 1979 provided for specific instances that would result in the denial of state reimbursement when utilization review standards pursuant to Section 153-d of the Social Services Law were not met. Paragraph (a) of subdivision 1 of such law requires reimbursement to be withheld when "the child's foster care status has not been the subject of a timely petition in accordance with the requirements of section 392 of this chapter...".

### III. Program Implications

Foster care review refers to court proceedings which take place after disposition and at which the court comprehensively considers the status of a case. The new reviews required by Chapter 902 of the Laws of 1986 will allow the Family Court to take a thorough and deliberate look at the status of children who are free for adoption. Decisions concerning the future of such children need to be made before too much time has elapsed in order to give such children the early advantage of a permanent home. Foster care reviews for children free for adoption will help ensure that decisions are made at regular and frequent intervals and that such decisions are implemented expeditiously. Such reviews can help move a case forward by requiring the parties involved to set timetables and take specific action which will ultimately lead to a finalized adoption.

Chapter 902 of the Laws of 1986 contains a number of provisions directed toward accomplishing the goal of a finalized adoption for children who are free for adoption.

Subdivision one of Section 392 of the Social Services Law has been amended to include in the definition of "foster care" the care of children freed for adoption and placed in a prospective adoptive home and no petition to finalize the adoption has been filed within twelve months after placement for the purpose of required court reviews. For the purposes of this directive placement in a prospective adoptive

home is defined as: the placement of a legally free child in a home for the purpose of adoption; an adoptive placement agreement has been signed; and an entry of such placement, the date thereof, the date of the agreement and the names and address of the adoptive parents have been recorded in a bound volume maintained by the agency. In addition a new definition has been added to subdivision one of Section 392 of the Social Services Law. "Child freed for adoption" is defined as meaning a child whose custody and guardianship has been committed to an authorized agency pursuant to Section 384 of the Social Services Law (Guardianship and custody...commitment by surrender instrument) and Section 384-b of the Social Services Law (Guardianship and custody...commitment by court order). It should be noted that this provision of law applies to all children freed for adoption, i.e. children voluntarily placed in foster care, and children who are in care as a result of a court order pursuant to Article 3, 7 or 10 of the Family Court Act. The definition of a "child freed for adoption" overrides the exclusions found in paragraph (b) of Subdivision 1 of Section 392 of the Social Services Law which excludes children in foster care pursuant to Article 3, 7 or 10 of the Family Court Act.

A third definition is added to Subdivision one of Section 392 of the Social Services Law. "Petition for adoption" is defined as a petition filed as required by Title 2 of Article 7 of the Domestic Relations Law for all public adoptions.

Amendments to Subdivision 2 and paragraph (d) of Subdivision 3 of Section 392 of the Social Services Law, sets out the new requirement that where a child has been freed for adoption for six months and not placed in a prospective adoptive home, or where a child has been freed for adoption and placed in a prospective adoptive home and no petition to finalize the adoption has been filed within twelve months after placement, a petition must be filed to review the status of the child. In circumstances where a child has been in continuous foster care for a period of

eighteen months and such child becomes free for adoption while in such care, a petition for court review must be filed as follows:

- ° 60 days prior to the end of the eighteenth month of foster care or earlier pursuant to Section 358-a of the Social Services Law or
- ° 6 months after the child is freed if such child has not been placed in a prospective adoptive home or
- ° 12 months after placement in a prospective adoptive home, if a petition to finalized the adoption has not been filed, whichever occurs first.

Pursuant to amendments to Subdivision 10 of Section 392 of the Social Services Law, the Family Court possesses continuing jurisdiction in proceedings concerning court reviews for children free for adoption. The Family Court may rehear such matters whenever it deems necessary or upon petition of any party entitled to notice but at least once every twelve months.

In all aforementioned court review hearings for children free for adoption the court is required to appoint a law guardian to represent the child, pursuant to an amendment to Section 249 of the Family Court Act.

Chapter 902 of the Laws of 1986 made specific amendments to the notice requirements contained in Subdivision 4 of Section 392 of the Social Services Law. This Section now prohibits notice of the hearing and service of the petition to a child's parent or guardian if the child has been freed for adoption and also prohibits such notice and service to any party to whom a parent entrusted the care of the child where such person transferred the care to an authorized agency. A new category of persons who are entitled to notice and service has been added, namely, "the prospective adoptive parent of a child who has been freed for adoption and in whose home such child has been placed...."

In accord, with the aforementioned focus on service provision, Subdivision 5-a of Section 392 of the Social Services Law has been amended to require the Family Court to consider what services have been provided to ensure and expedite the adoption of a child in determining an order of disposition. Furthermore, amendments to Subdivision 7 of Section 392 of the Social Services Law add three new possible dispositional orders that may be made as a result of a court review for a child free for adoption. These dispositional orders may:

- 1) direct the provision of services or assistance to the child and the prospective adoptive parent. Such service may not be ordered by the Court unless it is authorized or required to be made available by the State's Consolidated Services Plan currently in effect. Such an order must include, where appropriate, the evaluation of a child's eligibility for adoption subsidy, although a dispositional order may not require that an adoption subsidy be provided. If the Court finds that the authorized agency has violated such Court order, the Court has the power, pursuant to Section 753 of the Judiciary Law, to fine and/or imprison the social services official who violated the order. Additionally, pursuant to Subdivision 11 of Section 392 of the Social Services Law, the Family Court has the authority, if upon a rehearing it finds that the agency charged with the guardianship and custody of a child has failed to comply with such dispositional order, to commit the guardianship and custody of the child to another authorized agency; and/or
- 2) recommend that the State Department of Social Services conduct a utilization review pursuant to Section 398-b of the Social Services Law. The Court must make available to this Department relevant court records; and/or
- 3) recommend that the State Department of Social Services conduct an investigation concerning the discharge of responsibilities by the local social services district for the care and welfare of the child whose status is being reviewed.

Lastly, two additional amendments were made by Chapter 902 of the Laws of 1986. Both of the amendments concern new fair hearing rights for prospective adoptive parents. Subdivision 5 of Section 22 and Subdivision 1 of Section 372-b of the Social Services Law were both amended to establish the right of a prospective adoptive parent to request a fair hearing before the State Department of Social Services on the grounds that a social services official failed to provide adoption services or assistance to them on behalf of a child freed for adoption. Chapter 902 of the Laws of 1986 requires authorized agencies to provide written notice of such right at the time the child is placed in a prospective adoptive home.

#### IV. Required Action

All children in the custody and guardianship of the local Commissioner of Social Services who are free for adoption must have court reviews as specified in Section III of this release. Local social services districts or voluntary foster care agencies when these agencies have planning responsibility for a child who is free for adoption, must file petitions in Family Court for review. Petitions must be filed according to the following timetable:

- ° 60 days prior to the end of the eighteenth month of foster care or earlier pursuant to Section 358-a of the Social Services Law or
- ° 6 months after the child is freed if such child has not been placed in a prospective adoptive home or
- ° 12 months after placement in a prospective adoptive home, if a petition to finalize the adoption has not been filed, whichever occurs first. Subsequent petitions must be filed at the direction of the Court but at least every ten months from the date of the previous 392 hearing, in order to ensure a hearing at least every 12 months.

The filing requirements outlined above for the initial petition for court review of the status of a child free for adoption not placed in a prospective adoptive home within six months of being freed or placed in a prospective adoptive home but no petition

to finalize the adoption has been filed within twelve months after the placement in that home are subject to sanctions pursuant to Section 153-d of the Social Services Law. Subsequent petitions would not be subject to 153-d sanctions due to the fact that the statutory language of Subdivision 10 of Section 392 of the Social Services Law does not contain filing requirements for such subsequent petitions. Districts or agencies are required to provide documentation of having filed petitions in the following manner:

- (1) Timely entry of the appropriate data relating to the filing of the 392 petition into the Child Care Review Service (CCRS); or
- (2) A receipt from the Family Court that the petition has been filed is present in the Uniform Case Record; or
- (3) An entry in the Progress Notes of the Uniform Case Record and in the Court Involvement section of the UCR Reassessment and Service Plan Review that such a request to the Family Court has been made.

It should be noted that although any documentation of having filed petitions as outlined above suffice for the purpose of avoiding sanctions, both UCR and CCRS requirements must be met pursuant to Section 409-f of the Social Services Law and Section 442 of the Social Services Law respectively.

A determination by the Department denying reimbursement to a social services district for a violation of the filing requirements outlined above will not relieve the district or any agency from which the district has purchased foster care from its statutory or contractual obligations. Department regulations 18 NYCRR 430.13 contain additional information relating to utilization reviews and the Department's procedures regarding such reviews.

It should be noted that denial of reimbursement under Section 153-d of the Social Services Law does not include juvenile delinquents (JD's) and persons in need of supervision (PINS) cases. When such children are in the custody and guardianship of the commissioner, however, they are nevertheless deemed to be subject to the standards contained in this directive for children free for adoption. It should be further noted that the need for filing additional petitions

for review pursuant to Section 1055 of the Family Court Act, Section 756-a of the Family Court Act or Section 355.3 of the Family Court Act would be obviated if the child entered care originally as a result of an adjudication under any of the above sections of the Family Court Act or for any child adjudicated PINS or JD subsequent to being freed for adoption.

Social services officials must provide services which will expedite the adoption of a freed child whose goal is adoption and to prospective adoptive parents on behalf of any such child. Such service provision must include the evaluation of eligibility for adoption subsidy pursuant to Title 9 of Article 6 of the Social Services Laws and Department Regulations 18 NYCRR 421.24. Such law and the department's regulations do not however require the provision of such subsidy. Furthermore the social services official is only required to provide those services or assistance to the child and prospective adoptive parents which are authorized or required to be made available pursuant to the State's Consolidated Services Plan currently in effect. The service plan must be documented in the designated sections of the Uniform Case Record and data entered into CCRS.

Local social services districts and voluntary child caring agencies must provide written notice to prospective adoptive parents of their right to a fair hearing in the following circumstance:

- ° failure of a social services official to provide adoption services and assistance on behalf of a child freed for adoption authorized to be provide pursuant to the State Consolidated Services Plan.

This notice must be given to the prospective adoptive parents at the time a child is placed in their home or in the case of a foster parent adoption at the time the foster parents are approved to adopt a child in their home. A record of having furnished such notice must be documented in the case record by maintaining a copy of this notice in the record or making an entry in the progress notes of this fact.

Local social services officials are required to cooperate with any court ordered utilization review or other investigation conducted by the State Department of Social Services pursuant to Subdivision 7 of Section 392 of the Social Services Law.

#### V. Systems Instructions

Districts must continue to report Adoption Activities to CCRS. The A499 is used when the child is legally freed for adoption. The A550 is used when the child is placed in an adoptive home.

- ° when reporting the A499 (child legally freed for adoption), the date of activity is the date the court order is received in the district or the date the district is notified that the child has been freed. Modifier A is the effective date the child is ordered free for adoption.
- ° when reporting the A550 (child placed in adoptive home), the date of activity is either the date the child is placed in the adoptive home or if the foster parents will be adopting the child, the date the adoption agreement is signed. Modifier A indicates the type of home (current foster family or not current foster family).

To support the required court reviews as outlined in this Directive, CCRS will provide three additional legal action coming due and overdue notices:

1) Initial 392 Petition After Freeing for Adoption

If a child is free for adoption and not placed in an adoptive home, an initial 392 petition is due to be filed 6 months after the effective date the child is ordered free for adoption or 60 days prior to the 18th month of continuous foster care, or earlier if ordered by the court, whichever occurs first.

2) Initial 392 Petition After Placement in an Adoptive Home

If a child is free for adoption and placed in an adoptive home but no petition to

finalize the adoption has been filed, an initial 392 petition is due to be filed 12 months after the child is placed in an adoptive home (or 12 months after the adoption agreement is signed if the child is to be adopted by his foster parents) or 60 days prior to the 18th month of continuous foster care, or earlier if ordered by the court, whichever occurs first.

3) Subsequent 392 Petition After Freeing for Adoption or After Placement in an Adoptive Home

If a child remains free for adoption or remains free for adoption and continues in placement in an adoptive home but no petition to finalize the adoption has been filed, a subsequent 392 petition is due to be filed 10 months after the hearing held pursuant to the filing of the "Initial 392 Petition After Freeing for Adoption" or 10 months after the hearing held pursuant to the filing of the "Initial 392 Petition After Placement in an Adoptive Home" and every 10 months from the previous hearing thereafter, unless court ordered earlier, as long as the child remains in one of these statuses.

The failure to timely file the initial 392 petition after freeing for adoption and the failure to timely file the initial 392 petition after placement in an adoptive home are sanctionable under Section 153-d of the Social Services Law.

These notifications are in the process of development and more detailed specifications will be available in the future from the Bureau of Services Information Systems.

VI. Additional Information

A copy of Chapter 902 of the Laws of 1986 is attached for your information. The regulatory amendments required by these legislative changes will be forthcoming.

VI. Effective Date

Chapter 902 of the Laws of 1986 became effective on August 5, 1986. The requirements of this release are effective on May 1, 1987 retroactive to the effective date of the legislation.

  
Joseph Semidei  
Deputy Commissioner  
Division of Family and  
Children's Service

# STATE OF NEW YORK

10574

## IN ASSEMBLY

March 25, 1986

Introduced by M. of A. HOYT, VANN, LIPSCHUTZ -- Multi-Sponsored by -- M. of A. BRAGMAN, BRENNAN, CATAPANO, CONNERS, CONNOR, DANIELS, DAVIS, DEARIE, DIAZ, DUGAN, EVE, FARRELL, GOTTFRIED, GRANNIS, GREENE, HARENBERG, HEVESI, KEANE, KOPPELL, LAFAYETTE, LASHER, MAYERSOHN, McNULTY, MURTAUGH, NADLER, NEWBURGER, NORMAN, PASSANNANTE, PATTON, PROUD, RIVERA, YEVOLI -- read once and referred to the Committee on Children and Families

AN ACT to amend the social services law and the family court act, in relation to family court review of children freed for adoption

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

- 1 Section 1. Subdivision five of section twenty-two of the social ser-  
2 vices law is amended by adding a new paragraph (f) to read as follows:  
3 (f) Failure to provide adoption services or assistance to a prospec-  
4 tive adoptive parent on behalf of a child freed for adoption as defined  
5 in subdivision one of section three hundred ninety-two of this chapter  
6 pursuant to section three hundred seventy-two-b of this chapter and the  
7 state's consolidated services plan.  
8 § 2. The opening paragraph of subdivision one of section three hundred  
9 seventy-two-b of such law is designated paragraph b, and a new paragraph  
10 a is added to read as follows:  
11 a. A prospective adoptive parent shall have a right to a fair hearing  
12 pursuant to section twenty-two of this chapter concerning the failure of  
13 a social services official to provide adoption services authorized to be  
14 provided pursuant to this section and the state's consolidated services  
15 plan. At the time a child is placed in a prospective adoptive home, the  
16 prospective adoptive parent shall be notified in writing of his or her  
17 right to such fair hearing.  
18 § 3. Subdivision one of section three hundred ninety-two of such law,  
19 as amended by chapter six hundred sixty-six of the laws of nineteen hun-  
20 dred seventy-six, paragraph (b) as amended by chapter nine hundred

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

LBD13129-07-6

1 twenty of the laws of nineteen hundred eighty-two, is amended to read as  
2 follows:

3 1. As used in this section, unless otherwise expressly stated or un-  
4 less the context requires a different interpretation[,];

5 (a) "foster care" shall mean care provided a child in a foster family  
6 free or boarding home, group home, agency boarding home, child care in-  
7 stitution, health care facility or any combination thereof[:] and for  
8 the purpose of court review under this section, shall include care for a  
9 child who has been freed for adoption and placed in a prospective adop-  
10 tive home and no petition for adoption has been filed within twelve  
11 months after placement;

12 (b) "child" shall mean a child under the age of eighteen years for  
13 whom an authorized agency is providing foster care, except a child who  
14 is in the care of an authorized agency pursuant to court order under ar-  
15 ticle seven, three or ten of the family court act;

16 (c) "child freed for adoption" shall mean a child whose custody and  
17 guardianship has been committed to an authorized agency pursuant to sec-  
18 tion three hundred eighty-four or section three hundred eighty-four-b of  
19 this chapter;

20 (d) "petition for adoption" shall mean a petition filed pursuant to  
21 title two of article seven of the domestic relations law.

22 § 4. The opening paragraph of subdivision two of section three hundred  
23 ninety-two of such law, as amended by chapter one hundred forty-one of  
24 the laws of nineteen hundred eighty-three, is amended to read as  
25 follows:

26 Where an authorized agency determines that a child will remain in  
27 foster care for a continuous period of eighteen months, or where a child  
28 has been freed for adoption for a period of six months and not placed in  
29 a prospective adoptive home, or where a child has been freed for adop-  
30 tion and placed in a prospective adoptive home and no petition for adop-  
31 tion has been filed within twelve months after placement, whichever is  
32 sooner, a petition to review the foster care status of such child  
33 together with a copy, if any, of the placement instrument:

34 § 5. Paragraph (d) of subdivision three of section three hundred  
35 ninety-two of such law, as amended by chapter eight hundred eight of the  
36 laws of nineteen hundred eighty-five, is amended to read as follows:

37 (d) shall be filed in the appropriate family court at least sixty days  
38 prior to the end of the month which would constitute the eighteenth  
39 month of continuous foster care placement, or earlier where so directed  
40 by the court pursuant to section three hundred fifty-eight-a of this  
41 chapter; provided, however, that the court shall direct that such  
42 earlier petition shall be filed within thirty days of the date required  
43 for the next review of the child's service plan pursuant to section four  
44 hundred nine-e of this chapter. However, for a child who has been freed  
45 for adoption and not placed in a prospective adoptive home, such peti-  
46 tion shall be filed six months after such child has been freed; or for a  
47 child who has been freed for adoption and placed in a prospective adop-  
48 tive home and no petition for adoption has been filed twelve months af-  
49 ter placement, such petition shall be filed twelve months after such  
50 child has been in placement in such prospective adoptive home. In cir-  
51 cumstances where a child has been in continuous foster care and such  
52 child becomes free for adoption while in such care, the petition shall  
53 be filed (i) sixty days prior to the end of the month which would con-  
54 stitute the eighteenth month of continuous foster care placement, or  
55 earlier where so directed by the court pursuant to section three hundred

1 fifty-eight-a of this chapter, (ii) within six months after such child  
2 has been freed for adoption and not placed in a prospective adoptive  
3 home, or (iii) within twelve months after such child has been in place-  
4 ment in a prospective adoptive home and no petition for adoption has  
5 been filed, whichever is sooner.

6 § 6. Subdivision four of section three hundred ninety-two of such law,  
7 as amended by chapter six hundred sixty-six of the laws of nineteen hun-  
8 dred seventy-six, paragraph (c) as amended by chapter one hundred forty-  
9 one of the laws of nineteen hundred eighty-five, is amended to read as  
10 follows:

11 4. Notice of the hearing, including a statement of the dispositional  
12 alternatives of the court, shall be given and a copy of the petition  
13 shall be served upon the following, each of whom shall be a party en-  
14 titled to participate in the proceeding:

15 (a) the authorized agency charged with the care and custody or the  
16 guardianship and custody of such child, if such authorized agency is not  
17 the petitioner;

18 (b) the authorized agency having supervision of such foster care, if  
19 such authorized agency is not the petitioner;

20 (c) the foster parent or parents in whose home the child resided or  
21 resides at or after the expiration of a continuous period of twelve  
22 months in foster care;

23 (d) the child's parent or guardian who transferred the care and  
24 custody of such child temporarily to an authorized agency and, for pur-  
25 poses of this subdivision, shall not include the parent or guardian of a  
26 child freed for adoption;

27 (e) a person to whom a parent entrusted the care of the child, where  
28 such person transferred the care of the child to an authorized agency  
29 and for purposes of this subdivision, shall not include such person when  
30 such child has been freed for adoption;

31 (f) the prospective adoptive parent of a child who has been freed for  
32 adoption and in whose home such child has been placed and no petition  
33 for adoption has been filed within twelve months after such placement;  
34 and

35 (g) such other person as the court may, in its discretion, direct.

36 § 7. Subdivision five-a of section three hundred ninety-two of such  
37 law, as added by chapter six hundred sixty-seven of the laws of nineteen  
38 hundred seventy-six, is amended to read as follows:

39 5-a. In reviewing the foster care status of the child and in determin-  
40 ing its order of disposition, the court shall consider, among other  
41 things:

42 (a) the appropriateness of the plan;

43 (b) what services have been offered to strengthen and re-unite the  
44 family except as provided in paragraph (d) of this subdivision;

45 (c) where return home of the child is not likely, what efforts have  
46 been or should be made to evaluate or plan for other modes of care ex-  
47 cept as provided in paragraph (d) of this subdivision; [and]

48 (d) in the case of a child freed for adoption, what services have been  
49 provided to ensure and expedite the adoption of such child; and

50 (e) any further efforts which have been or will be made to promote the  
51 best interests of the child.

52 § 8. Subdivision seven of section three hundred ninety-two of such  
53 law, as separately amended by chapters six hundred sixty-six and six  
54 hundred sixty-seven of the laws of nineteen hundred seventy-six, is  
55 amended to read as follows:

- 1 7. At the conclusion of such hearing, the court shall, upon the proof  
2 adduced, in accordance with the best interest of the child, enter an or-  
3 der of disposition:
- 4 (a) directing that foster care of the child be continued; or
- 5 (b) in the case of a child whose care and custody have been trans-  
6 ferred temporarily to an authorized agency directing that the child be  
7 returned to the parent, guardian or relative; or
- 8 (c) in the case of a child whose care and custody have been trans-  
9 ferred temporarily to an authorized agency directing any agency speci-  
10 fied in subdivision four of this section to institute a proceeding, pur-  
11 suant to section three hundred eighty-four-b of this chapter, to legally  
12 free such child for adoption, if the court finds reasonable cause to  
13 believe that grounds therefor exist. Upon a failure by such agency to  
14 institute such a proceeding within ninety days after entry of such or-  
15 der, the court shall permit the foster parent or parents in whose home  
16 the child resides to institute such a proceeding unless the agency, for  
17 good cause shown and upon due notice to all parties to the proceeding,  
18 has obtained a modification or extension of such order, or unless the  
19 court has reasonable cause to believe that such foster parent or parents  
20 would not obtain approval of their petition to adopt the child in a sub-  
21 sequent adoption proceeding; [or]
- 22 (d) in the case of a child [whose guardianship and custody have been  
23 committed to an authorized agency by an order of a surrogate or judge of  
24 the family court or by a surrender instrument] freed for adoption,  
25 directing that such child be placed for adoption in the foster family  
26 home where he resides or has resided or with any other person or per-  
27 sons;
- 28 (e) in the case of a child freed for adoption for a period of six  
29 months and not placed in a prospective adoptive home or in the case of a  
30 child freed for adoption and placed in a prospective adoptive home and  
31 no petition for adoption has been filed within twelve months after  
32 placement, directing the provision of services or assistance to the  
33 child and the prospective adoptive parent authorized or required to be  
34 made available pursuant to the comprehensive annual services program  
35 plan then in effect. Such order shall include, where appropriate, the  
36 evaluation of eligibility for adoption subsidy pursuant to title nine of  
37 article six of this chapter, but shall not require the provision of such  
38 subsidy. Violation of such an order shall be subject to punishment pur-  
39 suant to section seven hundred fifty-three of the judiciary law;
- 40 (f) in the case of a child freed for adoption for a period of six  
41 months and not placed in a prospective adoptive home or in the case of a  
42 child freed for adoption and placed in a prospective adoptive home and  
43 no petition for adoption has been filed within twelve months after  
44 placement, recommending that the department conduct a child welfare ser-  
45 vices utilization review pursuant to section three hundred ninety-eight-  
46 b of this chapter. The court shall make available to the department all  
47 relevant court records relating to the proceeding or any related  
48 proceedings; or
- 49 (g) in the case of a child freed for adoption for a period of six  
50 months and not placed in a prospective adoptive home or in the case of a  
51 child freed for adoption and placed in a prospective adoptive home and  
52 no petition for adoption has been filed within twelve months after  
53 placement, recommending that the department investigate the facts and  
54 circumstances concerning the discharge of responsibilities for the care

1 and welfare of such child by a social services district pursuant to sec-  
2 tion three hundred ninety-five of this chapter.

3 An order of disposition entered pursuant to this subdivision shall in-  
4 clude the court's findings supporting its determination that such order  
5 is in accordance with the best interest of the child. If the court  
6 promulgates separate findings of fact or conclusions of law, or an opin-  
7 ion in lieu thereof, the order of disposition may incorporate such find-  
8 ings and conclusions, or opinions, by reference.

9 § 9. Subdivision ten of section three hundred ninety-two of such law,  
10 as amended by chapter six hundred sixty-six of the laws of nineteen hun-  
11 dred seventy-six, is amended to read as follows:

12 10. The court shall possess continuing jurisdiction in proceedings un-  
13 der this section and, in the case of children who are continued in  
14 foster care, shall rehear the matter whenever it deems necessary or  
15 desirable, or upon petition by any party entitled to notice in proceed-  
16 ings under this section, but at least every twenty-four months. In case  
17 of a child freed for adoption for a period of six months and not placed  
18 in a prospective adoptive home or in the case of a child freed for adop-  
19 tion and placed in a prospective adoptive home and no petition for adop-  
20 tion has been filed within twelve months after placement, the court  
21 shall possess continuing jurisdiction in proceedings under this section  
22 and shall rehear the matter whenever it deems necessary or upon petition  
23 by any party entitled to notice in proceedings under this section, but  
24 at least once every twelve months.

25 § 10. Subdivision eleven of section three hundred ninety-two of such  
26 law, as added by chapter six hundred sixty-six of the laws of nineteen  
27 hundred seventy-six, is amended to read as follows:

28 11. Where the court has entered an order of disposition concerning a  
29 child freed for adoption and not placed in a prospective adoptive home,  
30 pursuant to paragraph (d) or (e) of subdivision seven, directing that  
31 the child be placed for adoption or directing the provision of services  
32 or assistance to the child and the agency charged with the guardianship  
33 and custody of the child fails, prior to the rehearing of the proceeding  
34 pursuant to subdivision ten, to comply with such order, the court at the  
35 time of such rehearing may, in the best interests of the child, enter an  
36 order committing the guardianship and custody of the child to another  
37 authorized agency or may make any other order authorized pursuant to  
38 section two hundred fifty-five of the family court act.

39 § 11. Subdivision (a) of section two hundred forty-nine of the family  
40 court act, as amended by chapter nine hundred twenty of the laws of  
41 nineteen hundred eighty-two, is amended to read as follows:

42 (a) In a proceeding under article seven, three [or] ten [or under],  
43 section three hundred eighty-four-b of the social services law, or under  
44 section three hundred ninety-two of such law in the case of a child  
45 freed for adoption for a period of six months and not placed in a  
46 prospective adoptive home or in the case of a child freed for adoption  
47 and placed in a prospective adoptive home and no petition for adoption  
48 has been filed twelve months after placement, or when a minor is sought  
49 to be placed in protective custody under section one hundred fifty-  
50 eight, the family court shall appoint a law guardian to represent a  
51 minor who is the subject of the proceeding or who is sought to be placed  
52 in protective custody, if independent legal representation is not  
53 available to such minor. In any proceeding to extend or continue the  
54 placement of a juvenile delinquent or person in need of supervision pur-  
55 suant to section seven hundred fifty-six or 353.3 or any proceeding to

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