

SSL 384B: COMMITMENT OF CUSTODY.

Copyright 2007, Yosef Seigel. MAY BE FREELY DISTRIBUTED.

The legislative intent is that normally a child should be in a family with birth parents. However if that's not in the child's best interests, State shall first try to assist the family until and unless it becomes clear that the stay in foster care is unnecessarily long, then parents' rights shall be terminated.

Child "enters care" earlier of 60 days from actual removal, or from fact-finding.

Petition must be filed if child is abandoned, or in care for at least 15 out of most recent 22 months; UNLESS: no services were provided to parents; child is in relative's care; or compelling reason why commitment not in child's best interests. Compelling reason = child in care for delinquency finding, and goal is Return to Parent or Alternate Permanent Planned Living Arrangement; goal is NOT adoption for foster care placement; child over 14 won't consent to adoption; no grounds to file; Article 10 case is still pending disposition, and likely will be discharge home.

Agency files petition. If agency fails to timely file [60 days from statutory deadline, or 90 from Court's directive]: foster parent or relative with care can file, else Court can direct child's Law Guardian or Guardian ad litem; in such instances the agency must be joined and served.

Care, custody, and guardianship can be committed to agency, or to foster parent or relative. If to foster/relative: court MAY revoke if no adoption filed within 6 months; MUST revoke if adoption is finally denied/dismissed. Revoke = commit to agency.

Family Court has exclusive jurisdiction if parents are mentally ill/retarded; have permanently neglected the child; or subjected child to severe/repeated abuse. Surrogates court has concurrent original jurisdiction together with Family over orphans with no legal guardian, and if parents abandoned child for more than 6 months prior to filing. If abandonment was for less than 1 year, Judicial Notice must be taken of agency's reasonable efforts to locate parents.

If child is in foster care, proceeding must be brought in the Family Court having jurisdiction; if multiple Family Court cases, where most recent was held.

Else can be filed in county of child/parent residence at time of filing; if addresses are not known, then where agency has "regular business" office.

Child must be under 18 at time of filing, and in care of agency. If child turns 18 after filing, disposition of commitment can only be entered on child's consent.

If petition is filed in the wrong court: proceedings shall be stayed up to 30 days so filing court can communicate with presumptively correct court. If such court exercises

jurisdiction, transfer must be within 35 days.

Finding shall be clear & convincing.

Mentally ill/retarded Resps do not enjoy usual privilege of doctor/patient confidentiality; Court must take testimony of either Qualified Psychiatrist, or Psychologist licensed by Education Law.

Permanent neglect = no visit/contact/support/plan for return for 1 full year, OR total of 15/22 months. If parent is institutionalized or hospitalized, time is not counted but neither does it interrupt the period. Agency need not have made diligent efforts where parents have not updated agency of their whereabouts for 6 months, or are incarcerated and failing to plan.

Severe Abuse = depraved indifferent serious physical injury [P.L. 10]; felony sex act against child; Murder/Manslaughter 1,2 for another child or parent (unless perpetrator was victim of decedent's domestic violence), also facilitations, solicitations, and conspiracies of such; or Assault 1,2 or Aggravated (including Attempts) of child under 11 years old.

Repeated Abuse = felony sex [P.L. 130] OR protracted disfigurement/impairment, **IF:** Resp had prior finding of child abuse OR criminal conviction for felony sex within past 5 years.

Severe/Repeated Abuse dispositional hearing **MUST** be clear & convincing by competent/material/relevant proof.

Court **MAY** inquire of child over 14 as to personal wishes.

Court can either Commit care, custody, and guardianship, OR suspend judgment.

Commitment does **NOT** terminate inheritance from parents, or right to share of Social Security or insurance.

Foster care continues until adoption or alternate permanent planned living arrangement.

Order must be filed with County Clerk in same manner as surrender instrument.

Notice of Entry must be promptly served by Agency Attorney upon adoptive parents; Court shall determine if any person entitled to notice of adoption proceedings have already been noticed herein, in which case further notice is dispensed with.