

Soc. Serv. Law. §§384-b

F.C.A § 614

**FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF SCHENECTADY**

In the Matter of the Commitment of
Guardianship and Custody pursuant to
§ 384-b of the Social Services Law of

File No.: 82295

KELLY SMITH, (d.o.b. 03/15/2016)
(CIN # FR12345K), and
JANE SMITH, (d.o.b. 03/19/2018)
(CIN # GD12354)

Docket No.:

Docket No.:

Children under the Age of Eighteen Years
Alleged to be Permanently Neglected Children,

**PETITION
(PERMANENT
NEGLECT)**

ERICA SMITH, (d.o.b. 06/07/1998)
(CIN # DD98765E)

Respondent.

**IF THIS PETITION IS GRANTED, YOU MAY LOSE YOUR RIGHTS TO YOUR CHILD
AND YOUR CHILD MAY BE ADOPTED WITHOUT YOUR CONSENT AND WITHOUT
NOTICE TO YOU.**

**IF YOU ARE THE PARENT, FOSTER PARENT OR CUSTODIAN OF THE CHILD, YOU
HAVE A RIGHT TO HAVE A LAWYER REPRESENT YOU. IF YOU CANNOT AFFORD
A LAWYER, YOU MAY ASK THE COURT TO APPOINT A LAWYER TO REPRESENT
YOU WITHOUT FEE.**

TO THE FAMILY COURT:

1. **PETITIONER**, is the Commissioner of the Schenectady County Department of Social Services, having offices at 797 Broadway and 388 Broadway, Schenectady, New York 12305, by **JACKIE MARTINEAU**, Supervisor B for the Office of Children and Family Services for the Schenectady County Department of Social Services, a person duly authorized to file this petition.

2. a. **KELLY SMITH**, is a female child under the age of eighteen years, born on March 15, 2016, in the Town of Princetown, State of New York, who now resides in a certified foster home in Schenectady County.

b. **JANE SMITH**, is a female child under the age of eighteen years, born on March 19, 2018, in the Town of Princetown, State of New York, who now resides in a certified foster home in Schenectady County.

c. The children, **KELLY SMITH and JANE SMITH**, are not Native-American children, who are subject to the Indian Child Welfare Act of 1978 (25 U.S.C. §§ 1901-1963).

3. The full name and last-known address of each parent and custodian of the children are:

<u>Name</u>	<u>Last-Known Address</u>
ERICA SMITH MOTHER	7 EDISON BOULEVARD SCHENECTADY, NY 12303
JOE SMITH FATHER	45 LOCOMOTIVE WAY SCHENECTADY, NY 12304
PAUL BRADY LEGAL CUSTODIAN	c/o SCHENECTADY COUNTY DEPARTMENT OF SOCIAL SERVICES 388 BROADWAY SCHENECTADY, NY 12305

4. a. The name and last-known address of any other interested party who should be afforded notice of this proceeding are:

<u>Name</u>	<u>Last-Known Address</u>
SHEILA ELLSBURY, ESQ. LAW GUARDIAN	835 COTTAGE LANE SCHENECTADY, NY 12305

b. There are no persons other than those set forth entitled to notice of this proceeding or of an adoption of the children.

5. a. The children were removed from their home on February 4, 2020, and came into the care of an authorized agency on February 4, 2020, under the following circumstances: On February 4, 2020, the children, **KELLY SMITH and JANE SMITH**, were removed from the Respondent, **ERICA SMITH**, following a Protective Removal. On February 10, 2020, after a preliminary hearing pursuant to Section 1027 of the Family Court Act, the removal was upheld in the Schenectady County Family Court by the **HONORABLE JILL S. POLK**. The docket numbers for the above stated proceeding are: NN-00372-20 and NN-00373-20. The Schenectady County Family Court File Number is 82295.

b. The children, **KELLY SMITH and JANE SMITH** have been in the care of an authorized agency for (i) a continuous one- year period immediately prior to the initiation of this proceeding; and (ii) 15 of the most recent 22 months.

6. Upon information and belief, the authorized agency has made diligent efforts to encourage and strengthen the parental relationship as follows:

a. The Schenectady County Department of Social Services made substantial efforts to

ensure that the Respondent, **ERICA SMITH**, was in compliance with orders from Schenectady County Family Court that she cooperate with substance abuse evaluation and follow any and all recommendations made therein in that:

- i. The Schenectady County Department of Social Services referred the Respondent, **ERICA SMITH**, for an alcohol/substance abuse evaluation and treatment at Good Choices Recovery Center; and
- ii. The Schenectady County Department of Social Services and service providers provided transportation assistance, as needed, to the Respondent, **ERICA SMITH**; and
- iii. The Schenectady County Department of Social Services requested that the Respondent, **ERICA SMITH**, attend random urine drug screens for drugs and alcohol; and
- iv. The Schenectady County Department of Social Services and service providers regularly counseled, encouraged, and advised the Respondent, **ERICA SMITH**, about the need to refrain from use of alcohol, drugs including marijuana, and the misuse of prescription and/or over the counter medication; and
- v. The Schenectady County Department of Social Services and service providers provided casework counseling to the Respondent, **ERICA SMITH**, regarding the necessity and importance of attending and participating in alcohol and substance abuse counseling and the importance of complying with treatment recommendations; and
- vi. The Schenectady County Department of Social Services and service providers facilitated service plan reviews with the Respondent, **ERICA SMITH**, to review the case plan and any progress or lack thereof; and
- vii. Good Choices Recovery Center referred the Respondent, **ERICA SMITH**, to inpatient alcohol and substance abuse treatment facilities.

b. The Schenectady County Department of Social Services and service providers made substantial efforts to ensure that the Respondent, **ERICA SMITH**, cooperate with a mental health evaluation and treatment until successfully completed and follow any and all recommendations made therein in that:

- i. The Schenectady County Department of Social Services provided the Respondent, **ERICA SMITH**, with a list of Mental Health Providers and their contact information; and
- ii. The Schenectady County Department of Social Services and service providers provided casework counseling to the Respondent, **ERICA SMITH**, regarding the necessity to attend and participate in mental health counseling; and
- iii. The Schenectady County Department of Social Services and service providers provided transportation assistance, as needed, to the Respondent, **ERICA SMITH**; and

- iv. The Schenectady County Department of Social Services and service providers facilitated service plan reviews with the Respondent, **ERICA SMITH**, to review the case plan and any progress or lack thereof.

c. The Schenectady County Department of Social Services made substantial efforts to ensure that the Respondent, **ERICA SMITH**, was in compliance with orders from Schenectady County Family Court that she cooperate with an anger management program until successfully completed and follow any and all recommendations made therein in that:

- i. The Schenectady County Department of Social Services provided the Respondent, **ERICA SMITH**, with self-referral information to anger management programs; and
- ii. The Schenectady County Department of Social Services and service providers provided casework counseling to the Respondent, **ERICA SMITH**, regarding the necessity to attend and participate in an anger management program; and
- iii. The Schenectady County Department of Social Services and service providers facilitated service plan reviews with the Respondent, **ERICA SMITH** the review the case plan and any progress or lack thereof.

d. The Schenectady County Department of Social Services and service providers made substantial efforts to ensure that the Respondent, **ERICA SMITH**, participate in and successfully complete a parenting class and follow any and all recommendations made therein in that:

- i. Southwest Parent and Child Society's Intensive Aftercare Prevention Program provided the Respondent, **ERICA SMITH**, with parenting and prevention services; and
- ii. The Schenectady County Department of Social Services and service providers provided casework counseling to the Respondent, **ERICA SMITH**, regarding the necessity and importance of successfully completing a parent education program; and
- iii. The Schenectady County Department of Social Services and service providers facilitated service plan reviews with the Respondent, **ERICA SMITH**, the review the case plan and any progress or lack thereof; and
- iv. The Southwest Parent and Child Society Supervised Visitation Program provided the Respondent, **ERICA SMITH**, with assistance during her visits with the children, **KELLY SMITH** and **JANE SMITH**, by addressing difficulties if needed; and

e. The Respondent, **ERICA SMITH**, was provided with services to address and resolve conflict in her relationships which impeded her ability to meet her children, **KELLY SMITH and JANE SMITH** needs and ensure their safety, in that:

- i. The Schenectady County Department of Social Services provided the Respondent, **ERICA SMITH**, with self-referral information for domestic violence counseling; and
- ii. Southwest Parent and Child Society's Intensive Aftercare Prevention Program provided the Respondent, **ERICA SMITH**, with counseling and education to assist her in making healthy choices regarding relationships; and
- iii. Southwest Parent and Child Society's Intensive Aftercare Prevention Program provided the Respondent, **ERICA SMITH**, with the 'How To Spot A Dangerous Man' curriculum; and
- iv. The Schenectady County Department of Social Services and service providers provided casework counseling to the Respondent, **ERICA SMITH**, regarding the necessity and importance of engaging in domestic violence counseling; and
- v. The Schenectady County Department of Social Services and service providers facilitated service plan reviews with the Respondent, **ERICA SMITH**, to review the case plan and any progress or lack thereof.

f. The Schenectady County Department of Social Services and service providers made substantial efforts to assist the Respondent, **ERICA SMITH**, in achieving and maintaining a safe, sanitary, and stable housing, in that:

- i. The Schenectady County Department of Social Services and service providers provided casework counseling to the Respondent, **ERICA SMITH**, regarding the necessity and importance of obtaining and maintaining safe, stable and sanitary housing; and
- ii. The Schenectady County Department of Social Services and service providers facilitated service plan reviews with the Respondent, **ERICA SMITH**, to review the case plan and any progress or lack thereof; and
- iii. The Schenectady County Department of Social Services and service providers provided the Respondent, **ERICA SMITH**, with casework counseling regarding the importance of saving and budgeting; and
- iv. Lawson's Short Term Services provided the Respondent, **ERICA SMITH**, with supportive services as it related to her housing.

7. Upon information and belief, notwithstanding such efforts, the Respondent parent, **ERICA SMITH**, has failed for a period of 15 of the most recent 22 months following the date the children came into the care of the authorized agency substantially and continuously or repeatedly to maintain contact with or plan for the future of the children, although physically and financially able to do so:

a. The Respondent, **ERICA SMITH**, failed to engage in alcohol and substance abuse treatment and comply with recommendations in that:

- i. On or about February 12, 2020, the Respondent, **ERICA SMITH** tested positive for alcohol and marijuana; and
- ii. On or about March 2, 2020, the Respondent, **ERICA SMITH**, tested positive for marijuana; and
- iii. On or about August 12, 2020, the Respondent, **ERICA SMITH**, tested positive for cocaine, alcohol, and marijuana; and
- iv. On or about August 17, 2020, the Respondent, **ERICA SMITH**, tested positive for cocaine and marijuana; and
- v. On or about August 24, 2020, the Respondent, **ERICA SMITH**, tested positive for amphetamine, cocaine, and marijuana; and
- vi. On or about September 16, 2020, the Respondent, **ERICA SMITH**, tested positive for methamphetamine, amphetamine, cocaine, alcohol, and marijuana; and
- vii. On or about September 21, 2020, the Respondent, **ERICA SMITH**, tested positive for methamphetamine, amphetamine, cocaine, alcohol, and marijuana; and
- viii. On or about September 30, 2020, the Respondent, **ERICA SMITH**, tested positive for cocaine, alcohol, and marijuana; and
- ix. On or about September 30, 2020, a scheduled service plan review meeting with the Respondent, **ERICA SMITH**, had to be canceled due to the Respondent, **ERICA SMITH**'s confusion from being 'so high'; and
- x. On or about October 15, 2020, the Respondent, **ERICA SMITH**, tested positive for methamphetamine, amphetamine, alcohol, and marijuana; and
- xi. On or about October 20, 2020, the Respondent, **ERICA SMITH**, tested positive for alcohol and marijuana; and
- xii. On or about October 28, 2020, the Respondent, **ERICA SMITH**, tested positive for marijuana; and
- xiii. On or about November 18, 2020, the Respondent, **ERICA SMITH**, tested positive for marijuana; and
- xiv. On or about November 18, 2020, the Respondent, **ERICA SMITH**, was unsuccessfully discharged from substance abuse treatment at Good Choices Recovery Center due to not following treatment recommendations while continuing to test positive for various substances; and
- xv. On or about December 30, 2020, the Respondent, **ERICA SMITH**, failed to attend her scheduled drug screen; and
- xvi. On or about January 13, 2021, the Respondent, **ERICA SMITH**, failed to attend her scheduled drug screen; and
- xvii. On or about February 3, 2021, the Respondent, **ERICA SMITH**, failed to attend her scheduled drug screen; and

- xviii. On or about February 10, 2021, the Respondent, **ERICA SMITH**, tested positive for methamphetamine, amphetamine, quetiapine, norquetiapine, hydroxyquetiapine, cocaine, and marijuana; and
- xix. On or about July 21, 2021, the Respondent, **ERICA SMITH**, failed to attend her scheduled drug screen; and
- xx. On or about September 15, 2021, the Respondent, **ERICA SMITH**, admitted to service providers that she had a bottle of alcohol in the bag that she brought to her supervised visit with the children, **KELLY SMITH** and **JANE SMITH**.

b. The Respondent, **ERICA SMITH**, failed to engage in mental health treatment and comply with recommendations in that:

- i. On or about July 23, 2020, the Respondent, **ERICA SMITH** no-call-no-showed to her scheduled mental health appointment at Electric City Health; and
- ii. On or about September 25, 2020, the Respondent, **ERICA SMITH**, no-call-no-showed to her scheduled mental health appointment at Electric City Health; and
- iii. On or about October 7, 2020, the Respondent, **ERICA SMITH**, no-call-no-showed to her scheduled mental health appointment at Electric City Health, despite the Schenectady County Department of Social Services Caseworker transporting her to the appointment at Electric City Health; and
- iv. The Respondent, **ERICA SMITH**, is not currently engaged in mental health treatment

c. The Respondent, **ERICA SMITH**, failed to cooperate with an anger management program until successfully completed in that;

- i. In September 2020, the Respondent, **ERICA SMITH**, was unsuccessfully discharged from the Anger Management course through Good Choices, due to lack of attendance; and
- ii. In February 2021, the Respondent, **ERICA SMITH**, failed to attend the Anger Management course through Good Choices, that she was registered for; and
- iii. As of the filing date of this petition, the Respondent, **ERICA SMITH**, has not successfully completed an anger management program, nor has she consistently engaged in mental health treatment.

d. The Respondent, **ERICA SMITH**, has a history of engaging in relationships that are characterized by domestic violence which impedes her ability to meet her children, **KELLY SMITH** and **JANE SMITH** needs and ensure their safety, in that:

- i. The Respondent, **ERICA SMITH** is currently residing with the children's father, **JOE SMITH**, who she has a long history of engaging in domestic violence behaviors with; and
- ii. On or about, June 11, 2020, the Respondent **ERICA SMITH**, engaged in a physical altercation with a minor male, who she was engaging in a romantic/sexual relationship with, which resulted in Police involvement; and
- iii. On or about, December 26, 2020, the Respondent, **ERICA SMITH**, reported to Schenectady County Department of Social Services Caseworkers that she engaged in a physical altercation with, **JOE SMITH** in a Walmart; and
- iv. On or about February 3, 2021, **JOE SMITH**, was arrested as a result of engaging in a physical altercation with the Respondent, **ZAKIYA CLARKE**; and
- v. On or about September 28, 2021, the Respondent, **ERICA SMITH**, canceled an appointment with prevention program, IAPP, stating that she and **JOE SMITH**, were drinking the night prior and they engaged in a physical altercation and she has bruising 'all down my arms and legs.'

e. The Respondent, **ERICA SMITH**, has failed to maintain safe, stable and sanitary housing for her children, **KELLY SMITH and JANE SMITH**, to be returned to, in that:

- i. The Respondent, **ERICA SMITH**, was residing at **4 WILLOW VILLAGE, SCHENECTADY, NY 12308**, from around 2017 until she was evicted from that residence around March 2021; and
- ii. The Respondent, **ERICA SMITH**, was then staying with her father and each were renting a room from a family friend, until she left around July 2021; and
- iii. The Respondent, **ERICA SMITH**, is currently staying with **JOE SMITH**, and his mother.

8. The best interests of the children require the commitment of the guardianship and custody of the children to an authorized agency for the following reasons: The Respondent, **ERICA SMITH**, had not progressed enough to become independent in meeting her own needs, nor can she meet with any independence or consistency the needs of her children, **KELLY SMITH and JANE SMITH**. The children, **KELLY SMITH and JANE SMITH** have remained in foster care for eighteen (18) months. There have been multiple services provided to the Respondent, **ERICA SMITH**, without progress and the children, **KELLY SMITH and JANE SMITH**, require permanency. On October 22, 2020, the Schenectady County Department of Social Services filed an abandonment petition against the children's father, **JOE SMITH**. The trial is scheduled for October 13, 2021.

9. The children are under the jurisdiction of the Family Court. If so, this petition has been

filed in the Court that exercised jurisdiction over the most recent permanency or other proceeding involving this child.

10. No previous application has been made to any court or judge for the relief sought herein.

WHEREFORE, the Petitioner requests an order determining that the above-named child is a permanently neglected child, and committing the guardianship and custody of the child to an authorized agency foster parent(s), and for such other and further relief as in the interests of the child may be granted.

Dated: October 21, 2021

CHRISTOPHER J. WEBBNER
County Attorney

BY: **JOSEPH FARMINGTON, ESQ.**
Assistant County Attorney for
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388 Broadway
Schenectady, New York 12305