



RICHARD J. BARTLETT
STATE ADMINISTRATIVE JUDGE

STATE OF NEW YORK
OFFICE OF COURT ADMINISTRATION
270 BROADWAY
NEW YORK, NEW YORK 10007

JUL 22 1975

S- 5408

July 22, 1975

MICHAEL R. JUVILER
COUNSEL

Honorable Judah Gribetz
Counsel to the Governor
Executive Chamber
Albany, New York 12224

Re: S. 5408

Dear Mr. Gribetz:

Thank you for soliciting the views of this office concerning this measure.

This bill was drafted by this Office and introduced by Senator Gordon and Assemblyman Thorp at our request. Its purpose is to codify the constitutional right to assigned counsel in Family Court proceedings, and to clarify and conform existing statutory provisions of New York Law to existing constitutional standards.

We consider this bill to be a much needed and major reform of the Family Court Act and related statutes, and accordingly, strongly urge the Governor's approval.

This measure is a long overdue restatement of New York law, and is limited by its terms to instances where there is a constitutionally mandated obligation to assign counsel for poor persons involved in Family Court proceedings and subsequent appeals. Essentially, it gives statutory expression to the decision of the Court of Appeals in Matter of Ella B., 30 N.Y. 2d 352, and addresses the uncertainty that followed in its wake because of conflicting statutory provisions in certain instances, and the absence of statutory provisions in others.

Specifically, this measure would repeal sections 621, 831, and 1043(a) of the Family Court Act which mandate the assignment of counsel to indigent parents in permanent neglect, family offense and child protective proceedings. These deleted sections

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are replaced by new sections 261 and 262 to combine the assignment of counsel in these proceedings with all other proceedings where assignment of counsel to adults in Family Court proceedings is constitutionally mandated. Specifically, these include proceedings instituted under sections 358-a, 384 and 392 of the Social Services Law, any proceeding involving the issue of custody, a contempt proceeding resulting from an alleged violation of an order of the Family Court, and an adoption proceeding involving a parent opposing the adoption.

This bill would also amend section 249 of the Family Court Act to cover assignment of law guardians in all cases where the Family Court has jurisdiction. Also, it would add a new section 1120 to clarify and conform the requirement that counsel be assigned to represent a party upon an appeal if such assignment was constitutionally mandated in the initial Family Court proceeding.

Articles 18-A and 18-B of the County Law are similarly amended to conform to the constitutional requirements for assigned counsel in the Family Court. Sections 717 of Article 18-A, which enumerates the duties of a Public Defender -- an office now existing in 26 counties in the State -- has been amended to require a Public Defender to represent indigents in the Family Court in appropriate cases. Allied sections of Article 18-B have also been amended to provide compensation for assigned counsel in the Family Court and upon appeal. Further section 35 of the Judiciary Law has been amended to include appeals from Family Court proceedings.

We estimate the maximum current cost to county governments statewide to be no more than \$175,000. In many larger counties and in the City of New York, there will be no additional cost since these governmental units have been assigning counsel in accordance with the Ella B. decision.

This bill will further reduce costs to municipalities by authorizing the appointment of Public Defenders to represent poor persons in appropriate cases. This will eliminate the need to assign private counsel at the statutory rates provided in Article 18-B of the County Law.

This bill has an effective date of January 1, 1976 so as to allow county governments sufficient time to make adequate budgetary provisions to implement this bill.

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Once again, we hope very much that Governor Carey will approve this important reform. We are confident that its enactment into law will have the effect of upgrading the resources and effectiveness of the judicial component of the juvenile justice system.

Very truly yours,

Michael R. Juviler

Michael R. Juviler

MRJ:mls

B-20

30-Day Bill
BUDGET REPORT ON BILLS

Session Year: 19 75

SENATE

Introduced by:

ASSEMBLY

No. 5408

Mr. Gordon

No.

Law: Family Court Act

Sections:

JUL 23 1975

Division of the Budget recommendation on the above bill:

Approve: X Veto: No Objection: No Recommendation:

1. Subject and Purpose: This bill would codify the constitutional right to assign counsel to indigent adults who are parties of Family Court proceedings, eliminates the ability to pay provisions with regard to assignment of law guardian to minors, provides for assigned counsel for any party in an appeal to a case who is eligible for such counsel in the original Family Court proceedings, and requires the public defender to represent indigent parties in family court proceedings.
2. Summary of provisions: This bill repeals sections 621 and 831 of the Family Court Act, the provisions of which are expanded as noted above and reconstituted as new sections 261 and 262 of such act.

In addition to the provisions noted above, this bill also amends §722 of the Act to require each county to plan for providing for counsel for parties eligible for such assistance:

The existing provision of law detailing reimbursement for assigned counsel and the procurement of services other than counsel is amended to include eligible parties in Family Court proceeding.

The effective date of this act would be January 1st.

3. Legislative history: This is a new bill.
4. Arguments in support: In its decision of the Matter of Ella B., 30 NY 2nd 352 (1972) the Court of Appeals defined the constitutional right of counsel to apply to indigent adults as well as children, for those who are parties to a Family Court proceeding. This bill would clarify the law with regard to this mandate.

This bill would also extend the statutory right of counsel to those appeals resulting from Family Court decisions. The Office of Court Administration indicates that this is a common practice but for which the law does not provide.

Thirdly, consistent with the constitutional mandate, this bill amends portions of the County Law with regard to the public defender representing these indigent adult parties in Family Court proceedings.

Date: _____ Examiner: _____

Disposition: _____ Chapter No. _____ Veto No. _____

5. Possible objections: There may be some financial hardships on counties who do not now provide for assigned counsel to parties in Family Court proceedings.
6. Other State agencies interested: None.
7. Other interested groups: New York State counties; the American Bar Association; the American Civil Liberties Association, Legal Aid Societies. The Office of Court Administration requested introduction of this bill.
8. Budget implications: The Office of Court Administration indicates that the total financial impact for all counties would be \$175,000 or less annually. There would be no impact in New York City, where counsel is assigned for eligible parties. There will be no State impact.
9. Recommendation: As the cost is relatively low, and this bill would adjust State law to comply with the Constitution, it is recommended that this bill be approved.

Date: July 21, 1975

Examiner: *OK*
D. C. W. Sawyer
David C. W. Sawyer

Disposition:

Chapter No.

Veto No.

S. J.