

Memorandum in Support

COMMITTEE ON CHILDREN AND THE LAW

Children #2

June 15, 2011

S. 5456
A. 7598

By: Senator Savino
By: M. of A. Paulin
Senate Committee: Children and Families
Assembly Committee: Children and Families
Effective Date: Immediately

AN ACT to amend the family court act and the social services law, in relation to notice of indicated reports of child maltreatment and changes of placement in child protective and voluntary foster care placement and review proceedings; and to repeal certain provisions of the family court act, in relation to technical changes thereto

LAW AND SECTION REFERRED TO: Sections 1017, 1055, 1089 of the Family Court Act; section 358-a of the Social Services Law

THE NYSBA CHILDREN AND THE LAW COMMITTEE STRONGLY SUPPORTS THE BILL FOR THE FOLLOWING REASONS:

Courts have long held that children in foster care and their parents have a right to effective assistance of counsel at significant stages of court proceedings pertaining to their foster care placement. Because a change in placement (particularly a long term placement, a placement with a relative, or a placement in a pre-adoptive home) is one of the most significant decisions that can be made affecting a child in foster care, the right to effective assistance of counsel is significantly undermined when a placement is changed without providing the child's attorney and the parent's attorney with ten days notice of a planned change and notice as soon as practicable following an emergency change.

The child's attorney and the parent each plays a critical role in proceedings pertaining to a child's foster care placement. Each brings a different perspective to the case, which can be used to help reduce the distress caused by changing a child's foster care placement. When all of the parties are notified of the intent to change a child's placement, they may identify services that could avert the need to move the child, identify family resources that could care for the child, or identify other appropriate foster care placements where the child's needs may be better met. If a transfer of placement is nevertheless indicated, the child's attorney or parent may provide information regarding the child's schooling or community ties to ameliorate the transition to a new placement. The federal Fostering Connections to Success and Increasing Adoptions Act of 2008 mandates that a child's

school placement remain stable despite placement changes, if it is in the child's best interests to remain in the same school. The child's parent and attorney must have notice that a placement change is contemplated to ensure the requirements of the Fostering Connections Act are being considered and every effort made to assure the child's educational stability. When a change of placement must be made on an emergency basis, it is also crucial to notify the parent and the child's attorney so that they know where their child/client is.

A similar bill was vetoed by the prior governor last session (S.5266/A.8418). Subsequent to the veto, the New York State Office of Children and Family Services issued an administrative directive "Notice of Placement Change to Attorneys for Children," (Administrative Directive #10-0CFS-ADM-16), which requires notification of attorneys for children of any change in a child's placement in foster care. Similarly, New York City Administration for Children's Services issued a memorandum entitled "Notice of Placement Change to Attorneys for Children." Both directives omit notice to the attorney for the parent.

This legislation will make certain that all parties have all relevant information, so that the best planning possible is done for children in foster care. The Bill does not require that a hearing be held each time a change in placement is contemplated or that the court be informed. Permitting notification by electronic means will allow effective notification at little or no cost. Providing all of the relevant parties with prior notice of a planned move represents an effective means to minimize needless or counter-productive transfers, and to pursue ameliorative services when a placement change is necessary.

Based on the foregoing, the Committee on Children and the Law of the New York State Bar Association **SUPPORTS** this legislation.

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Committee Chair: Prof. Merrill Sobie