

Memorandum in Support

COMMITTEE ON CHILDREN AND THE LAW

Children #5

April 28, 2014

S. 4081-B
A. 2599-B

By: Senator Felder
By: M. of A. Paulin

Senate Committee: Children and Families
Assembly Committee: Rules
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 SECTIONS REFERRED TO: Section 1017 of the family court act.

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(s) 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(s) 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(s) and the child's attorney so that they know where their child/client is.

A similar bill was vetoed by the prior governor in 2010 (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." Unfortunately, ACS and other agencies statewide have failed repeatedly to notify attorneys of changes in placement and children have been harmed because of the lack of compliance. Clearly, a statute mandating notification is needed.

This legislation's requirement to provide notification of placement changes to those who most need to know mandates that the notices need to go to counsel for the parties, as well as the child's attorney. Notifying the parties' counsel as well as the child's attorney, is a matter of basic due process and is long overdue.

This legislation will ensure that all parties have all relevant information, so that the best planning possible is done for children in foster care. The report required to be made by the local social services district is not onerous, requiring only the anticipated date of the placement change, the basis for the change and the contact information for additional information. Nor does the proposal require that a hearing be held each time a change in placement is contemplated or that the court be informed. Instead it recognizes that notice to the parties will suffice, as court action would only be required when the parties deem it necessary. The process it would establish simply allows parents and attorneys for the children affected by these moves to take timely action, if any is needed. Permanency planning for these children is thereby expedited, at cost savings to the State, New York City and counties.

Permitting notification by electronic means will allow effective notification at little or no cost. Permanency hearing, conference and other notices are frequently sent electronically and all institutional providers, as well as assigned counsel, have e-mail addresses. Providing all of the relevant parties and the child's attorney with prior notice of a planned move represents an effective means to minimize needless or counter-productive transfers, and to pursue ameliorative services to the child affected when a placement change is necessary.

This legislation also provides that notices of indicated child abuse and neglect reports must be sent to the parties' attorneys, as well as the child's attorney, regardless of who the subject of the report may be. This requirement, also a basic matter of due process for all parties, is simply a modest expansion of the requirement already contained in Family Court Act 1052-a. That section requires notices to the child's attorney of indicated reports in which a respondent is the subject or another person named in the report. Recognizing that sometimes a child may be harmed by a care-giver, not necessarily the respondent, and that if that is the case, all parties need to be made aware of it, this legislation requires notice of indicated reports to be provided to all counsel. In many cases, this will not require any additional notice, since the changes in placement often ensue directly from an indicated report of suspected abuse or neglect.

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

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