

## Memorandum in Support

### COMMITTEE ON CHILDREN AND THE LAW

Children #9

June 16, 2014

S. 3831-A

By: Senator Gallivan

A. 2602-B

By: M. of A. Paulin

Senate Committee: Children and Families

Assembly Committee: Codes

Effective Date: On the 90<sup>th</sup> day after it shall  
have become a law

**AN ACT** to amend the family court act, in relation to adjudication, dispositional and violation procedures in juvenile delinquency and persons in need of supervision cases.

**LAW AND SECTIONS REFERRED TO:** Sections 315.3, 360.2, 735, 776, 779 and 779-a, and adds Section 743 of the family court act.

### THE COMMITTEE ON CHILDREN AND THE LAW SUPPORTS THIS LEGISLATION

This bill strengthens the procedural structure for significant aspects of juvenile delinquency and person in need of supervision (PINS) proceedings related to violations of certain court orders. The bill also addresses an important deficiency in the PINS framework in the area of admissions. The bill provides needed clarification for courts and practitioners and recognition of the due process interests of children involved in these proceedings.

*ACD Reinstatement*--In juvenile delinquency proceedings an adjournment in contemplation of dismissal (ACD) includes "...such terms and conditions as the court deems appropriate..." (Family Court Act section 315.3[1]). The effectiveness of an ACD results in large measure from the possibility that the underlying delinquency proceeding will be reinstated if the young respondent violates those conditions. However, the Family Court Act currently provides only the most limited guidance as to how reinstatement is to be accomplished. In *Matter of Edwin L*, 88 N.Y.2d 593 (1996), the Court of Appeals outlined essential elements of due process required for reinstatement proceedings. The bill would build on those elements to establish a straightforward ACD reinstatement procedure, enhancing the utility of the ACD as an intervention in delinquency matters.

*PINS Allocution*--The great majority of PINS proceedings are resolved through admissions. Given the important liberty interests at stake for the young respondents, it is essential that an admission be based on an judicial allocution of the child, and the child's parents, in which the facts underlying the admission are established and acknowledged, and the court assures that the child has a clear understanding of the important rights she or he is giving up and the possible consequences. The Family Court Act makes no provision for allocution in PINS matters, which has given rise to extensive appellate litigation. This bill would address this gap by establishing an allocution procedure analogous to that provided in delinquency proceedings.

Other provisions of this bill would toll the period of a conditional discharge issued in a delinquency proceeding during the pendency of a violation petition; and establish procedures for dealing with violations of orders for suspended judgment and probation in PINS proceedings, reflecting analogous provisions in delinquency matters.

This proposal addresses significant procedural gaps, and merits adoption.

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

Betsy Ruslander, Chair  
Committee on Children and the Law

Kathleen DeCataldo, Chair  
Legislative Response Subcommittee