

Memorandum in Support

COMMITTEE ON CHILDREN AND THE LAW

Children #1

May 27, 2015

S. 5286

By: Senator Gallivan

A. 5897

By: M. of A. Paulin

Senate Committee: Children and Families

Assembly Committee: Children and Families

Effective Date: On the 90th day after it

shall have become a law

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

LAW AND SECTIONS REFERRED TO: Amends Family Court Act Sections 360.2, 735, 776, 779 and 779-a, and adds Section 743.

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.

PINS Allocation--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 allocation 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 allocation in PINS matters, which has given rise to extensive appellate litigation. This bill would address this gap by establishing an allocation 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 forgoing, 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