

Memorandum Urging Approval

COMMITTEE ON CHILDREN AND THE LAW

Children #5-GOV

June 8, 2015

S. 5054
A. 7644

By: Senator Felder
By: M. of A. Fahy
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 and the executive law, in relation to severe child abuse and orders of protection in child abuse and neglect cases.

LAW AND SECTIONS REFERRED TO: Amends Family Court Act § 1051;
Executive Law § 221-a.

THE COMMITTEE ON CHILDREN AND THE LAW SUPPORTS THIS LEGISLATION AND URGES ITS APPROVAL

This bill would amend Family Court Act (FCA) § 1051(e) to permit a finding of severe and repeated abuse against any respondent in a FCA Article 10 child protective proceeding, not just against a child's parents. FCA § 1012(a) defines respondent to include a child's parent or other person "legally responsible" for his or her care. That person can include a custodian, defined broadly as a person "continually or at intervals found in the same household of the child", a guardian or other person "responsible for the child's care at the relevant time". The failure to include "other persons legally responsible" was clearly an oversight that should be corrected.

Severe abuse as defined in the Social Services Law includes reckless or intentional acts of abuse or "intentional acts ...committed under circumstances evincing a depraved indifference to human life, which result in serious physical injury to the child" or commission of or knowingly permitting a felony sex offense against the child. Such heinous acts against children should result in the enhanced finding, which can be used in proceedings to protect other or later-born children from the risk of such abuse.

The bill would also amend Executive Law § 221-a to allow orders of protection issued pursuant to FCA Article 10 to be added to the statewide automated registry of orders of protection. Temporary and final orders of protection are often issued by the Family Court in Article 10 child protective proceedings. Since these orders involve the protection of children, it makes no sense to prohibit law enforcement and courts from the ability to ascertain that orders have been issued in another court or proceeding. Family Courts are required to check the registry before making important decisions regarding custody and visitation. The failure to include prior FCA Article 10 orders of protection makes this check an illusory protection, as the most pertinent orders to the court's decision are not listed.

Based on the forgoing, the New York State Bar Association's Committee on Children and the Law **SUPPORTS** this legislation and **URGES** its approval by the Governor.

Betsy Ruslander, Chair
Committee on Children and the Law

Kathleen DeCataldo, Chair
Legislative Subcommittee