

Memorandum in Support

COMMITTEE ON CHILDREN AND THE LAW

Children #1

May 17, 2011

S. 4504
A. 6823

By: Senator Savino
By: M. of A. Paulin
Senate Committee: Children and Families
Assembly Committee: Children and Families
Effective Date: June 1, 2011

AN ACT to amend the social services law, in relation to the differential response programs for child protection assessments or investigations; and to amend chapter 452 of the laws of 2007 amending the social services law relating to establishing differential response programs for child protection assessments or investigations, in relation to making such provisions permanent.

LAW AND SECTIONS REFERRED TO: Section 427-a of the social services law

THE NYSBA CHILDREN AND THE LAW COMMITTEE STRONGLY SUPPORTS THE PROPOSAL WITH ONE MODIFICATION

S.4504 /A.6823 would amend the Social Services Law (SSL) to make permanent and expand the pilot program established by Chapter 452 of the Laws of 2007, which allowed local social services districts other than New York City to establish an alternative response program to reports of child abuse and maltreatment. The new proposal would allow New York City to establish such a program. The NYSBA Children and Law Committee strongly supports S 4504/A 6823 with one modification.

An alternative or differential response program allows a DSS to assign certain reports of child abuse or maltreatment received from the Statewide Central Register of Child Abuse and Maltreatment (SCR) to a family assessment and services (FAR) track, once an initial safety check is made. Once a case is assigned to the FAR track, it is exempted from the statutory requirements for child protective service investigations of reports received from the SCR. Each alternative response program proposed by a local DSS must be approved by the Office of Children and Family Services. Excluded from consideration for the FAR track by law are reports containing allegations of sexual abuse, serious physical abuse, severe or repeated abuse, abandonment, and failure to thrive.

In the 2011 report to the Governor and Legislature required by Chapter 452 of the Laws of 2007, *Differential Response in Child Protective Services in New York State: Implementation, Initial Outcomes and Impacts of Pilot Project*, OCFS notes that 19 counties have initiated FAR programs. In the report, the FAR approach is described as one where:

[f]amilies are treated as partners in the FAR process and are approached in a non-adversarial way, including calling parents to arrange a time to meet with the family in lieu of making an unannounced home visit or seeing the children at school without parental knowledge. The FAR caseworker aims to gain a holistic understanding of the family's functioning through a comprehensive assessment of safety, risk, strengths, and needs. There is no formal determination of whether child maltreatment occurred.

The report noted strong evidence of increased family engagement and satisfaction; increased, expanded, and expedited access to appropriate services for families, especially services to meet basic family needs, such as food, housing, and utilities; broader involvement of the community in meeting family service needs; and a measurable decrease in family court petitions filed and formal child welfare case openings.

In most instances, serious child safety issues are not found in families who come to the attention of a local DSS through an allegation of child neglect. An approach which works with the family rather than subjecting the family to an often intrusive and frightening investigative process has proven effective across the country.

Given New York's positive experience with the 19 alternative response programs already commenced and the enormous benefit to families who are able to access and receive needed services without the potential negative consequences of a child protective investigation, it is appropriate to make the option of an alternate response approach available statewide on a permanent basis.

While strongly supporting this measure, the Committee would suggest one modification, that is, to incorporate an authorization for limited disclosure of FAR records, either through a judicial subpoena or to a court on its own motion, where necessary to the determination of an issue in a subsequent proceeding. In order to protect the confidentiality of the records, the court should review the records *in camera* and direct appropriate limitations on the portions of the records to be disclosed and upon any re-disclosure. While deemed "unfounded" and thereby sealed for all other purposes, FAR records may be essential to the appropriate resolution of later custody, visitation or child welfare cases involving the same children or the adults named in the original FAR report. Significantly, if the children are removed from home in a later child abuse or neglect case, the court requires the information to meet the federal and state mandates under the *Adoption and Safe Families Act* to make a case-specific determination of whether reasonable efforts had been made to prevent the removal of the children from the home. In that context, as well as in the court's broader obligation to determine the children's best interests in custody and other proceedings, the due process rights of litigants,

including the children, to information regarding a prior FAR experience may compel the limited disclosure suggested by the Committee.

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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