

Memorandum in Support

COMMITTEE ON CHILDREN AND THE LAW

Children #8

June 4, 2014

S. 6815

By: Senator Felder
Senate Committee: Children and Families
Effective Date: Immediately

AN ACT to amend the family court act, in relation to reentry of former foster children into foster care; and to repeal certain provisions of such law relating to making technical corrections thereto.

LAW AND SECTIONS REFERRED TO: Sections 355.3, 756-a, 1055, 1088, 1089, and 1091 of the family court act.

Since the passage of Chapter 342 of the Laws of 2010, which permits youth who have left foster care to live on their own at the age of 18, to reenter care if they have become homeless or otherwise unable to live independently, many young people have been able to take advantage of this vital safety net legislation. As a condition of reentry, they are participating in educational and vocational programs and, as a result, will be better prepared to transition to adulthood when they ultimately age out of foster care.

This bill would make explicit that most young people in out-of-home care, including those who were placed pursuant to Persons in Need of Supervision (PINS), and destitute minor adjudications, as well as voluntary placements and children freed for adoption but not yet adopted, have a right to re-enter care. In addition, youth placed in the custody of a local social services district as a result of a juvenile delinquency adjudication would also be eligible for re-entry under the bill. Those youth placed in the custody of the Office of Children and Family Services pursuant to a juvenile delinquency adjudication would not be covered by the bill.

In *Matter of Jefry H.*, 102 A.D.3d 132, 955 N.Y.S.2d 90, 2012 N.Y.Slip Op. 08007 (2nd Dept, 2012), the Appellate Division, Second Department, reversed a Family Court decision in which the judge had determined that Family Court Act § 1091 did not apply to PINS cases because explicit statutory language was missing. The Appellate Division disagreed with the judge's interpretation and held that Family Court Act § 1091 does apply to PINS who had been placed in foster care and stated that the rationale for enacting chapter 342 applies with equal force to *all* foster youth discharged from care. This bill would codify *Jefry H.* and ensure that all former foster youth who find themselves in dire straits are given the opportunity to be heard on their applications to return to care.

We strongly support the Legislature's efforts to ensure that children who have been discharged from out-of-home care are able, if necessary, to reenter in order to access services they need in order to transition successfully to adulthood. With the exception of short-term trial discharge in some counties, youth leaving out-of-home care with no permanent homes lack the safety net that families can provide. While youth can choose to remain in out-of-home care, research shows that those parts of the brain which govern impulsivity, judgment, planning for the future and understanding of consequences are not fully developed during adolescence, indeed, not until the mid-twenties. The consequences of that decision can be severe. Compared to their peers, youth who leave the foster care system at age 18 are more likely to become homeless, unemployed or incarcerated. If given the opportunity to remain under court supervision or return to out-of-home care, many of the deleterious outcomes experienced by youth who are discharged and later find themselves needing support could be minimized or averted.

The bill clarifies that this invaluable safety net is available to a number of very vulnerable groups of youth and therefore, the Committee on Children and the Law strongly urges the Legislature to pass the bill this Session. We hope that the law will be amended in the future to provide similar supports to youth who leave the custody of the Office of Children and Family Services.

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