New York State Bar Association
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Memorandum in Opposition

COMMITTEE ON CHILDREN AND THE LAW

Children #10 June 16, 2014

S. 2094-B By: Senator Golden
A. 7189-B By: M. of A. Rozic
Senate Committee: Children and Families
Assembly Committee: Judiciary
Effective Date: Immediately

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: Section 72 of the domestic relations law and section 651 of the family court act.

THE COMMITTEE ON CHILDREN AND THE LAW OPPOSES THIS LEGISLATION

This bill is opposed because it will cause disruption to families in this state and because it will not achieve its stated purpose.

Many families in this state are suffering because of the effects of poverty, unemployment, homelessness, and other causes. They often turn to family members for assistance. In the most dire cases, they will ask family members to care for their children temporarily, knowing that their children will be returned to them when conditions improve. The goal in such arrangements is always for the children and parents to be reunited. This bill would broaden the list of family members who have standing to change that status of temporary care to one of custody or guardianship, blocking those parents and children from being reunited without another court hearing.

The current law was set out by the Court of Appeals in Bennett v. Jeffreys, 40 N.Y.2d 543 (1976), which requires that the relative show extraordinary circumstances before being given standing to interfere with the constitutional right of children and parents to live together. Bennett is consistent with the constitutional framework establishing the primacy of the rights of a parent unless proven unfit. *See, e.g.,* Troxel v. Granville, 530 U.S. 57 (2000). Under this bill, relatives in the second degree of consanguinity or affinity to a parent would have automatic standing if the parent voluntarily allowed the children to reside with them for at least 24 consecutive months,

even if the children had maintained a close relationship with the parents during that period. For example, the bill would allow relatives standing if they had cared for the children while a parent was on active duty in the military, placing a military parent at a disadvantage in the effort to regain custody. The court may also grant standing to relatives who have had the children for less than two years.

This bill would also discourage parents from asking relatives to temporarily care for their children, because of the fear of losing custody. As a result, these children would be forced to continue living in undesirable conditions, such as a shelter, or forcing them into foster care at public expense.

This bill would also delay the return of children living with relatives because it might encourage relatives to refrain from efforts to assist the parents. This bill would only apply to children who are not in foster care and not under the supervision of a child welfare agency. Child welfare agencies are under an obligation to provide services to assist parents, but in the private arrangements that this bill addresses, the parents are not provided with such services.

In addition, in many of these cases, the child protective agency was involved in arranging the private care agreement, as a resolution of child neglect, abuse or permanency proceedings. Current law requires notice of custody proceedings to be given to such agencies, as well as to the attorneys for children. This bill cuts back on this important notice requirement by limiting the notice to cases involving relatives in the second degree of consanguinity or affinity. In order for the courts to fulfill its duty to determine whether such an arrangement is in the best interests of the children and whether the court's jurisdiction over the related child welfare proceeding is no longer necessary, the agencies and the attorneys for the children in the related child welfare proceeding must be notified of, and have the right to be heard in, the custody proceeding.

As is the case in so many aspects of our child welfare and custody system, this bill would harm minority children and parents more than any other group. Care by relatives is an important resource in minority communities, and most of the cases covered by this bill are minority families. As shown by the reasons opposing the bill, this bill would most drastically affect minority children, further splitting them from their parents.

Although the stated justification for this bill is to prevent children from going into foster care it they have an available relative to care for them, this bill only affects cases in which the children are not in foster care. Relatives may already obtain care, custody, or foster parent status of children in, or facing, foster care under the provisions of the Family Court Act.

The bill also creates an over-broad prohibition against a court making a finding of extraordinary circumstances in cases in which domestic violence committed against a parent was a contributing factor in the parent's voluntary relinquishment of custody to a relative. In some cases, a finding of extraordinary circumstances based upon a different Bennett factor, including, for example, persistent neglect or abandonment, may be

appropriate even if the parent had been a victim of domestic violence. A presumption against a finding of extraordinary circumstances, rather than an absolute prohibition, would be more appropriate.

Finally, although the sponsor claims that there would be no fiscal impact, the Family Courts would need more resources to hold the contemplated hearings.

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

Betsy Ruslander, Chair
Committee on Children and the Law

Kathleen DeCataldo, Chair
Legislative Response Subcommittee