New York State Bar Association
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# Memorandum in Opposition

## COMMITTEE ON CHILDREN AND THE LAW

Children # 12 June 8, 2018

A. 1050-A By: M. of A. Stirpe
S. 2059-A By: Senator Bonacic
Assembly Committee: Judiciary
Senate Committee: Judiciary
Effective Date: Immediately

**AN ACT** to amend the Judiciary Law, in relation to court-appointed special advocates program

**LAW AND SECTIONS REFERRED TO:** Judiciary Law by creating a new Article 21-C

### THE COMMITTEE ON CHILDREN AND THE LAW OPPOSES THIS LEGISLATION

The New York State Bar Association Committee on Children and the Law opposes this bill. Our Committee has long made effective representation of children in Family Court one of its main priorities. The Committee drafted and adopted numerous Standards for Attorneys Representing Children in New York. Especially relevant is "Standards for Attorneys Representing Children in Child Protective, Foster Care, Destitute Child and Termination of Parental Rights Proceedings," which was recently updated in 2015. Parts of the Standards have been incorporated into Court Rules.

Unlike some states, in which Court Appointed Special Advocates (CASA) volunteers may be helpful, New York provides an assigned attorney to every child in each of these proceedings. The attorney is assigned at the first time the case appears before a judge, usually the day of filing of the case. All of these attorneys have undergone training in such representation and have been approved by a court-appointed panel or a court-contracted legal service program. All attorneys have access to social workers and other experts that are needed in the proceedings. The attorneys stand as advocates for their clients, based upon the code of ethics for all attorneys and the published standards for the particular cases.

Participation by a CASA volunteer is not essential to the administration of justice, and does not ensure due process. In a child protective proceeding, the court receives information from the Department of Social Services, the attorney for the child, the

respondents, the foster parents, the contract foster care agency, and community based service providers, as well as their attorneys. It is highly unlikely that a CASA volunteer would have any additional information, but if one does, it can be presented through one of the parties or other witnesses. To simply add another party to the already crowded table, instead of insisting that those rightfully present are accountable, would just slow the proceedings.

There are fiscal problems as well. There would need to be a large expenditure of funds to properly train lay volunteers on the very complicated issues that arise in child protective proceedings. CASA volunteers are lay people who lack extensive training and experience in interviewing families and understanding the nuances of family dynamics. In addition, funds would be needed for OCA to review and supervise the CASA programs.

While CASAs can be of use in other states to give the court the child's position, and to arrange services, CASA volunteers often offer their opinions and recommendations to the court. However, the volunteers are neither trained nor qualified to give opinions and recommendations, and are not accountable to anyone the way attorneys and agencies are. There is a concern that CASA volunteers have often substituted their life experience, to make incorrect judgments about the experiences of many of the people who may appear in the Family Court. The most comprehensive evaluation of CASA ever done, an evaluation commissioned by the National CASA Association itself, bit.ly/CASAstdy, found:

- that CASA's only real accomplishments were to prolong the time children languished in foster care and reduce the chance that the child will be placed with relatives;

- no evidence that having a CASA on the case does anything to improve child safety;

- that CASA volunteers reported spending an average of only 4.3 hours per month on cases involving white children, and only 2.67 hours per month on cases involving black children.

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