

Memorandum in Support

COMMITTEE ON CHILDREN AND THE LAW

Children #10

June 3, 2019

A. 7941

By: M. of A. Jaffee

Assembly Committee: Children and Families

Effective Date: Immediately

AN ACT to amend the family court act, in relation to re-entry of former foster care children into foster care.

LAW AND SECTIONS REFERRED TO: Sections 355.3, 756-a1088, 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 re-enter care if they have become homeless or otherwise unable to live independently, many young people have been able to take advantage of this critical safety net legislation. As a condition of re-entry, 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 *all* young people in foster care, including those who were previously placed in a local social services district custody pursuant to Persons in Need of Supervision (PINS), juvenile delinquency and destitute minor adjudications as well as voluntary placements and children freed for adoption but not yet adopted are eligible to re-enter foster care. In addition, youth discharged from the custody of the Office of Children and Family Services would also be eligible for re-entry under the Bill. Most importantly, the Bill would enable youth who have “voted with their feet” by running away from foster care, as well as youth who have returned home or been discharged to other permanent plans that turn out, once they reach age 18, to leave them facing homelessness, to also re-enter care.

In *Matter of Jefry H.*, 102 A.D.3d 132, 955 N.Y.S.2d 90, 2012 (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 foster care for whatever reason are able, if necessary, to re-enter foster care 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 foster care with no permanent homes lack the safety net that families can provide. While youth can choose to remain in foster 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 to leave foster care 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 return to foster care, many of the deleterious outcomes experienced by youth who are discharged and later find themselves needing support could be minimized or averted.

Based on the foregoing, the NYSBA's Committee on Children and the Law **SUPPORTS** this legislation.