



Memorandum in Support

February 29, 2024

NYSBA #36

By: M. of A. Hevesi

By: Sen. Persaud

A.3588

S.7260

Assembly Committee: C&F

Senate Committee: C&F

Effective Date: Immediately

AN ACT to amend the family court act, in relation to proceedings regarding destitute children.

LAW & SECTION REFERRED TO: Section 1093 of the Family Court Act

THE NEW YORK STATE BAR ASSOCIATION **SUPPORTS THIS LEGISLATION**

The purpose of this legislation is to protect destitute children by providing the same ability to access the courts as children who are seeking to have a guardian appointed and children who have been abused or neglected. This legislation reflects a proposal approved by the New York State Bar Association's Executive Committee in 2022, making it Association policy.

Family Court Act Art. 10-C recognizes the importance of ensuring that destitute children are placed under the jurisdiction of the family court and in the care of the Department of Social Services or another responsible adult. However, unlike other statutes providing for the care of children who do not have an appropriate place to live with a legally responsible adult, only the Commissioner of Social Services is authorized to file a petition to have a child declared destitute. FCA § 1032 allows a person to file a petition at the court's direction to bring a child who has been abused or neglected under the jurisdiction of the court and placed in an appropriate home. Additionally, SCPA § 1703, allows children over the age of 14 who are in need of adult supervision to petition to have a guardian appointed for them.

In providing for someone other than the Commissioner of Social Services to file a petition, FCA § 1032 and SCPA § 1703 include an important "safety valve" to ensure that multiple avenues are available to place children into safe homes with appropriate adult supervision. Those provisions reflect the strong public policy of ensuring that vulnerable children are protected, without regard to whether the Commissioner of Social Services or another responsible adult steps forward to provide assistance.

Accordingly, it is recommended that the Family Court Act be modified so that destitute children have the same ability to access the courts as do children who are seeking to have a guardian appointed and children who have been abused or neglected.

Based on the foregoing, NYSBA **SUPPORTS** this legislation.