

Memorandum in Support

COMMITTEE ON CHILDREN AND THE LAW

May 10, 2025

S.5242

A.744

By: Senator Brisport

By: M. of A. Hevesi

Senate Committee: Third Reading

Assembly Committee: Passed

Effective Date: 90th day after it shall
become law

AN ACT to amend the social services law in relation to collecting data regarding alternative living arrangements for children who are at a substantial risk of maltreatment

THE COMMITTEE ON CHILDREN AND THE LAW SUPPORTS THIS LEGISLATION

The New York State Bar Association's Committee on Children and the Law strongly supports this amendment to the Social Services Law, which would require the local departments of social services to record and report on the practice of separating children from their parents using "voluntary" arrangements, not overseen by a family court.

A744/S5242 will shed much-needed light on the extent to which the local departments of social services separate parents and children without court authority or oversight and without the due process required by law.

These alternative living arrangements are made when child protective services (CPS) arranges for a parent to place their child in the care of a relative or family friend upon a threat (either implicit or explicit) that CPS will place the child with strangers, and file a petition in family court charging the parents with abuse or neglect if they do not comply.

Alternative living arrangements facilitated by CPS are problematic for several reasons. First, while CPS may assert that the arrangements are voluntary, without access to legal advice, parents and guardians too often cede custody of their children out of fear, believing that they have "no choice." Second, the practice leads to unnecessary separations when the agency lacks sufficient evidence to prove abuse or neglect but believes it would be better for the child to live apart from the parent. Finally, when the child is not living in the home and the family is not under family court

jurisdiction, the agency is able to evade its legal responsibility to work to preserve and reunify the family.

While children who must be separated from their parents fare better when placed with relatives or other adults they know well, such placements should only occur when absolutely necessary in emergency short term circumstances, only after the agency has made efforts to preserve the family unit, or after the parent has been assigned counsel, a court has approved the separation as necessary, and the agency develops a plan to help the family reunify. None of these important elements are implemented when an alternative living arrangement is made.

The practice of using alternative living arrangements (often called “hidden foster care”) has attracted increasing attention from academics, the media, and advocates across the political spectrum.¹ Courts have imposed multi-million dollar judgments in response to hidden foster care cases violating parents’ and children’s rights.² State legislatures have begun to respond: In May 2023, the Texas Legislature required its CPS agency to track data on hidden foster care arrangements.

The concern regarding the use of alternative living arrangements is particularly urgent in the wake of OCFS’s attempt to create a Host Homes program (18 NYCRR § 444), which would allow a parent to place their child in the home of strangers under the auspices of an OCFS authorized agency without any of the protections offered to children or parents when parents place their child in the home of strangers under the auspices of an OCFS-authorized agency under the rubric of the foster care system.

Separations that occur through alternative living arrangements are hidden because (1) they are done without the approval or oversight of the family court required by law when the state intervenes in a parent/child relationship; and, (2) the extent to which this occurs is not known because aggregate reporting is not required. A744/S5242 will prohibit agencies from hiding these separations by mandating that local departments of social services collect data and report on the use of “voluntary” family separations. Bringing these placements out of the shadows is an important first step toward ensuring that children and parents are separated only when absolutely necessary.

For these reasons, the Committee on Children and the Law supports this legislation and urges the legislature to pass it.

¹ E.g. Lizzie Presser, *How Shadow Foster Care is Tearing Families Apart*, N.Y. Times, Dec. 1, 2021, <https://www.nytimes.com/2021/12/01/magazine/shadow-foster-care.html>; Sharon McDaniel, *Increase Kinship Care, but not Through Diversion*, the Imprint, Oct. 21, 2024, <https://imprintnews.org/opinion/increase-kinship-care-not-through-diversion/255613>; The Coalition to End Hidden Foster Care, www.hiddenfostercare.org; Josh Gupta-Kagan, *America’s Hidden Foster Care System*, 72 Stan. L. Rev. 841 (2020).

² E.g. <https://wlos.com/news/local/cherokee-co-details-485-million-dollar-settlement-in-26-illegal-custody-law-suits>; <https://nkytribune.com/2020/04/sixth-circuit-court-of-appeals-rules-in-favor-of-holly-and-david-schulkers-in-suit-against-social-workers/>.