

MEMORANDUM OF SUPPORT

S.4767 (Avella)/A.6837 (Weinstein)

“An Act to Amend the Family Court Act, in Relation to Adjournments in Contemplation of Dismissal and Suspended Judgments in Child Protective Proceedings in the Family Court”

May 8, 2017

New York City institutional parent providers and the New York University School of Law Family Defense clinic support S. 4767 (Avella)/A.6837 (Weinstein) and propose some additional language to several sections.

The Center for Family Representation (CFR), Brooklyn Defender Services (BDS), Bronx Defenders (BxD), and Neighborhood Defender Services (NDS) (collectively “the institutional parent providers”) provide free legal and social work services to low-income families involved in the child welfare system. Through contracts with the New York City Mayor’s Office of Criminal Justice (MOCJ), BDS, BxD, CFR and NDS are the institutional providers assigned by the Family Court to represent respondents facing abuse, neglect, and termination of parental rights proceedings in Brooklyn, the Bronx, Manhattan and Queens. Our organizations serve over 6,000 families annually, touching the lives of over 12,000 children.

The institutional parent providers are joined in this Memorandum of Support by the New York University School of Law Family Defense Clinic which trains law and social work interns to represent parents accused of child abuse and neglect. The NYU Law Family Defense Clinic faculty teach, research, and write in the field of child welfare, advocate for policy reform, and train and provide technical support to parent advocates around the country.

PROPOSED LEGISLATION

The purpose of the proposed bill is to clarify and broaden the use of Adjournments in Contemplation of Dismissals (“ACD”) and Suspended Judgments in Article 10 proceedings. Most importantly, the proposed legislation seeks to amend the Family Court Act to permit Family Court judges to order ACDs after a fact-finding order but prior to the entry of a dispositional order. The proposal also clarifies how the terms of a suspended judgment are deemed satisfied and when, if at all, an indicated finding of neglect or maltreatment may be amended by the State Central Registry of Child Abuse and Maltreatment. The bill would provide judges and parties in Family Court with more options for resolving these complex cases

consistent with the rehabilitative purpose of the Family Court Act, thereby reducing litigation and improving the efficiency of the Family Court.

JUSTIFICATION

The institutional parent defense providers support the bill's provision authorizing Family Court Judges to order ACDs after an order finding neglect has been entered and before disposition without requiring the consent of all parties. The proposal allows for all parties to be heard with respect to such a motion. Providing the court with an additional dispositional outcome to rely on in appropriate cases will ensure a more timely and just resolution of cases.

In New York City, one reason the Administration for Children's Services (ACS), the City's child welfare agency, does not often consent to ACDs is because of the risk that the respondent will violate the terms or conditions during the ACD period. Under the current law, if ACS consents to an ACD, the agency would be required to prove the allegations in the original petition on a later date than the original fact finding date, a task complicated by the passage of time in that witnesses are more likely to be unavailable or forgetful. This bill addresses those concerns. Allowing the option of an ACD after a neglect finding has been entered, whether through a submission, an admission or a trial, allows the court to address the circumstances of the family at the time of fact finding, not at the time of the filing of the petition. While the agency may be able to prove by a preponderance of the evidence that a child was neglected or abused by the respondent parent in the past, that result does not necessarily address the safety of the child at the time the hearing takes place after services have been completed.

PROPOSED AMENDMENTS

The institutional parent providers support adding language after the proposed section 1039(e) (iii) to include a fourth subsection, 1039 (iv), to expressly permit the court to continue an ACD even after a violation has been found after a hearing as a third option on how the court may address a violation. Such a provision would permit the court to retain discretion. F.C.A. § 1039 (e) (iv) could be amended as follows:

- In the event of a proven violation before or after the entry of a fact-finding order, for good cause shown, the court may continue the original adjournment in contemplation of dismissal order after determining that a violation of the terms and conditions has occurred. The court may also add new terms and conditions to the adjournment in contemplation of dismissal order and set forth the reasons for ordering such terms and conditions on the record.

The institutional parent providers also suggest adding language to the proposed §§ 1039 (g) and 1071 to ensure the heightened process for parents when the removal of a child is sought when a violation of a term or condition of the ACD or suspended judgment is alleged. The amendment should mirror F.C.A. § 1027.

- The removal shall not be granted unless the party seeking the removal alleges facts that present an imminent risk to the life or health of a child. If a removal is sought, the court shall hold a hearing the same day or the next day pursuant to section one thousand twenty-seven of this article and the hearing shall occur either prior to or in conjunction with any hearing on whether a violation of adjournment in contemplation of dismissal occurred. Upon such a hearing, the court shall not grant the application for a removal unless it finds that the return presents an imminent risk to the child's life or health.

QUESTIONS?

For more information, please do not hesitate to contact:

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