



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

April 16, 2018

The Bronx Defenders, Brooklyn Defender Services, the Center for Family Representation, and Neighborhood Defender Service of Harlem (collectively “the parent defender offices”) provide free legal and social work services to low-income families involved in the child welfare system in New York City. Through contracts with the Mayor’s Office of Criminal Justice, the parent defender offices are assigned by the Family Court to represent respondents facing abuse, neglect, and termination of parental rights proceedings in the Bronx, Brooklyn, Manhattan and Queens. Our organizations serve over 9,000 families annually, touching the lives of over 18,000 children.

The parent defender offices are joined in these comments 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. 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.

The parent defender offices and the NYU Law Family Defense Clinic strongly support S.4767/A.6837. This legislation will clarify and broaden the use of Adjournments in Contemplation of Dismissals (“ACD”) and Suspended Judgments in Article 10 proceedings to maximize court efficiencies and ensure best outcomes for child welfare system-involved families.

CURRENT LAW

Adjournments in Contemplations of Dismissal (ACDs) are an important tool in child welfare cases to ensure best outcomes for families. ACD’s impose conditions on the family related to the initial neglect petition for a period of up to one year. If the parents comply with the terms of the ACD, then the case is dismissed at the end of the supervision period and parents have the opportunity to clear their record with the State Central Registry. This outcome allows parents to seek a broader range of employment opportunities in the future, which benefits all members of the family. If the conditions are not complied with, the period of supervision can be extended and/or the social service agency can seek a finding of neglect. Agencies are sometimes reluctant to agree to an ACD for a variety of reasons. However, in many cases, the family is best served by an ACD rather than a finding of neglect – so long as continued monitoring occurs for a set period of time to provide the courts and the social service agency with the assurance that the children are no longer at risk.

Under current law, in Article 10 proceedings, unlike in criminal matters, all parties must consent to the ACD. Family Court judges cannot overrule the objections of the social service agency if they do not consent - even when the court and the lawyers for the children believe an ACD is in the children's best interest. This means that many families who would be better served by an ACD are precluded from this result. In criminal courts, judges may grant an ACD in appropriate cases where justice demands a non-criminal disposition even if the District Attorney does not agree. Family Court judges should have similar power in Article 10 cases to ensure a range of dispositional outcomes and reduce unnecessary litigation.

PROPOSED LEGISLATION

The proposed bill gives courts another dispositional option after a neglect finding has been entered, whether through a submission, an admission or a trial. Parent defender offices strongly support the bill's provision authorizing Family Court Judges to order ACDs after a finding of neglect has been entered and before disposition without requiring the consent of all parties. After a neglect petition is filed, many families address the safety issues that led to the filing by engaging in programs and receiving social work support to ensure that the home is safe for the children. Under this proposal, judges will be able to consider an ACD for those families for whom a finding of neglect would be more harmful than helpful, particularly in cases in which the circumstances in the home have improved sufficiently since the filing of the petition. The option of an ACD appropriately allows the court to address the circumstances of the family at the time of the fact finding determination – which may come about months or years after the petition is filed.

S.4767/A.6837 requires courts to hear and consider all parties' concerns before ordering a post-finding ACD. To address the concerns of social service agencies, this bill ensures that in the event the matter is restored to the Family Court calendar as a result of a violation of the conditions of the adjournment, the matter would proceed to disposition no later than thirty days after the application to restore the matter to the calendar, unless an extension for "good cause" is granted by the court. The law makes clear that agencies retain their emergency removal powers under section 1024 of the Family Court Act.

In short, S.4767/A.6837 would provide judges and parties in Family Court with more options for resolving complex cases consistent with the rehabilitative purpose of the Family Court Act. It will also reduce litigation because parents will be more likely to agree to make an admission to neglect if they know that their case may result in the court ordering an ACD.

PROPOSED AMENDMENTS

The parent defender offices offer additional language that would strengthen the bill as described below but urge immediate passage of the bill even without these amendments.

We propose adding language after the proposed section 1039(e)(iii), which addresses the court's options where a violation of the ACD is established, to include a fourth subsection, 1039 (iv), that expressly permits the court to continue an ACD even after a violation has been found if the court deems that to be in the children's best interests after a hearing as a third option for the court to address a violation. Such a provision would expand the court's discretion, allowing it to retain jurisdiction over the family without abandoning the rehabilitative purpose of the ACD. 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 parent defender offices suggest adding language to the proposed §§ 1039 (g) and 1071 to clarify what process is due children and parents when the removal of a child is sought in the context of 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 remaining in the care of the parent or person legally responsible presents an imminent risk to the child's life or health.

CONCLUSION

Expanding the availability of ACDs in Family Court is a long overdue reform. The current law creates inefficiencies and precludes judges from ordering the most just outcome in many cases. We urge the legislature to pass and the Governor to sign S.4767/A.6837 into law this session.

For more information, please contact:

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