



**NEW YORK
CITY BAR**

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REPORT ON LEGISLATION BY THE COUNCIL ON CHILDREN

**A.8524
S.3868-A**

**M. of A. Scarborough
Sen. Montgomery**

AN ACT to amend the Family Court Act and the Social Services Law, in relation to restoration of parental rights.

THIS BILL IS APPROVED WITH SUGGESTED MODIFICATION

PURPOSE

The Council on Children of the New York City Bar Association is a diverse group of legal professionals representing eight City Bar committees and working on behalf of children. The Council supports A.8524/S.3868-A, which would amend the New York State Family Court Act and Social Services Law to permit the restoration of parental rights in certain limited circumstances after a termination of parental rights (TPR) has previously been ordered by the family court. The legislation provides a solution to the ongoing problem confronting children who are never able to find an adoptive home after the rights of their birth parents have been terminated. The sad reality is that unless these children are adopted, they may never achieve a permanent Legal relationship with any other adult. This bill provides a specific, well-defined judicial mechanism to restore parental rights, when returning to the parent becomes the most appropriate permanency plan.

REASONS FOR SUPPORT

The primary goal of a termination of parental rights is to provide children who have spent a long period of time in foster care with the opportunity to achieve a permanent legal relationship with another adult. For many children, termination of parental rights leads to successful adoption by a relative or non-kinship foster parent.

For some children, however, particularly older children, the goal of achieving a permanent legal connection to an adult other than their birth parent through an adoption finalization becomes unattainable, leaving them legal orphans. It is not uncommon for these same children to continue to maintain a relationship with their birth parents after the termination. This bond can strengthen over time, especially when the birth parents have overcome the problems underlying the child's initial placement in foster care.

This bill amends the New York State Family Court Act and Social Services Law to authorize the filing of a petition to restore parental rights in limited circumstances. The petition

can only be filed upon the consent of the parent, child¹, and the petitioner in the original TPR proceeding² (unless the consent of the petitioner is deemed to be unreasonably withheld). The final order in the TPR proceeding must have been issued more than two years prior to the filing of the petition to restore parental rights, and the original petition can not have been based upon severe or repeated child abuse.

Providing children with safe, nurturing family relationships is the goal of this legislation and it is consistent with the objectives of the Family Court Act and S.S.L §384-b. This important bill provides a mechanism for restoration of parental rights by the Family Court after a determination that based on clear and convincing evidence, it is in the child's best interests for parental rights to be restored. The court has available to it the option of conditionally restoring rights, while an agency supervises the parent and child on visits and/or a trial discharge home. This provides another opportunity for courts to ensure that restoring full parental rights is in the child's best interests.

Some local social services districts have objected to the bill on the grounds that the district (and not the court) should be the gatekeeper for the filing of a restoration petition and that no petition should be granted without their consent. The position of the local district is always taken into consideration by the court; however, as is the case when parental rights are terminated in the first instance, the district's position is not, and should not be dispositive.

SUGGESTED MODIFICATION

In its current formulation, the bill only allows for restoration of parental rights when a child is over the age of 14. This restriction creates particular problems for younger siblings who also may not have been adopted but would have to wait years in foster care before they could join their siblings and return to parents who have been determined to be safe, loving and appropriate resources under the proposed bill. Thus, we recommend that the bill apply to children over the age of 14 and their siblings who are under the age of 14.

May 2010

¹ The bill provides that, wherever practicable, the child shall be represented by the attorney who represented the child in the original proceeding.

² The petitioner in the original TPR proceeding is the local social services district.