



**NEW YORK
CITY BAR**

Contact: Maria Cilenti - Director of Legislative Affairs - mcilenti@nycbar.org - (212) 382-6655

**REPORT ON LEGISLATION BY THE
FAMILY COURT & FAMILY LAW COMMITTEE**

**A.7836-A
S.5694-A**

**M. of A. Paulin
Sen. Saland**

AN ACT to amend the family court act and the social services law, in relation to procedures for destitute children in the family court and to repeal section 1059 of the family court act, relating to abandoned children.

**A.8339
S.5745**

**M. of A. Paulin
Sen. Saland**

AN ACT to amend the social services law, in relation to kinship guardian assistance payments.

THESE BILLS ARE APPROVED

The New York City Bar Association is an organization of over 23,000 members dedicated to improving the administration of justice. The Association's Family Court and Family Law Committee ("the Committee") is a diverse group of legal professionals who come together to address a broad range of substantive and procedural issues regarding Family Court and family law. The Committee writes to support the passage of bills A.7836-A/S.5694-A and A.8339/S.5745 ("the Bills"), which would amend the Family Court Act and the Social Services Law to bring children who come into the custody of local social services districts under the jurisdiction of the Family Court.

Destitute children who need to be in the care and custody of a social services official are generally those without family or friends to care for them. Yet it is those same children who, under the current statutory framework, are deprived of the oversight of the family courts and representation of counsel that all other children in the custody of social services districts are provided. The Bills, if passed, would fill a gap left by Social Services Law § 398(1), which authorizes a local commissioner to take into custody a child who cannot be cared for at home, but does not provide a mechanism for the local commissioner to obtain legal custody of the child. In so doing, the Bills would ensure that destitute children – and their parents, if they appear – are provided with counsel, and that their right to due process is protected.

The concern has been raised that the definition of "destitute child" in A.7836-A/S.5694 conflicts with the definitions set forth in the Social Services Law. This is not the case, and should not prevent this important legislation from becoming law. Almost all children who would come into care under Social Services Law §§ 371 and 398(1) would also come under Family

Court jurisdiction pursuant to proposed Family Court Act § 1092. The one exception is older youth who are returning to foster care, and those young people would come under the jurisdiction of the Family Court pursuant to Family Court Act § 1091.

A.7836-A/S.5694 appropriately prescribes attempts to locate and serve missing parents. Additionally, the bill incorporates preliminary proceedings to determine whether a child can be safely returned home in those rare instances when a parent appears in court. This is a necessary component since the placement of a child, even one who is destitute, into the custody of a social services agency implicates a parent's liberty interest in the care of her child.

The passage of the Bills is essential because it entitles destitute children to placement in an appropriate setting as well as ongoing judicial review of needed permanency planning. At the conclusion of a destitute child proceeding, the court would have the authority to release the child to a parent, place the child with a relative, grant custody or guardianship to a relative, or place the child in foster care. A.8339/S.5745 makes explicit that destitute children who are placed in foster care may be eligible for kinship guardianship assistance. It is critical that the court have the authority to order any of these dispositions. If the court's authority were limited to placing destitute children in foster care with nothing further, those children would receive disparate treatment under the law from children who benefit from the full range of options. Furthermore, because circumstances change over time, it is crucial that these bills provide regular permanency hearings for destitute children, enabling the court to monitor permanency planning and ensure that it serves the best interests of the child.

Of particular significance in these difficult financial times is that the framework established by these bills will enable local social services districts to obtain reimbursement for the costs of caring for many destitute children pursuant to Title IV-E of the federal Social Security Act.

We encourage the enactment of this important legislation that will ensure that the best interests of children who are destitute and without the care and support of a parent will be served.

July 2011