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REPORT ON LEGISLATION BY THE MATRIMONIAL LAW COMMITTEE

A.7189-A **M. of A. Rozic**
S.2094-A **Sen. Golden**

An Act to amend the domestic relations law, in relation to the notification of certain relatives prior to the placement of children.

THIS BILL IS DISAPPROVED

The Matrimonial Committee of the New York City Bar Association opposes the amendments to N.Y. Dom. Rel. § 72 presented in A.7189-A/S.2094-A.

It is important to state at the outset that we support the justification for the bill and its intent to ensure that children are protected from the trauma of being placed in the foster care system when there are relatives whose homes can provide a safe and nurturing environment for the child. However, the bill, as presently drafted, may lead to a host of unintended and potentially deleterious consequences, including infringing upon a parent's right to raise his/her child, that mandate further review and study and not a rush to passage.

THE BILL IS OVERLY BROAD IN SCOPE

The bill's extension of the right to petition for custodial rights to the parents' relatives within the second degree of consanguinity provides an opportunity for exploitation of the legal process by family members in situations where the child is living with both parents in an intact marriage, and in circumstances where custody is shared by the child's parents. By expanding Domestic Relations Law § 72, this bill would enable extended family members[1] to intervene in matrimonial actions seeking custodial rights based upon a claim of extraordinary circumstances. While well-intended, the statute, as proposed to be amended, is ripe for abuse. Extended family members with financial resources would have the ability to wield the amended statute as a sword, exerting leverage on the non-monied parent without any recourse for a level playing field.[2] In an area of the law that is both

[1] The second degree of consanguinity includes grandchildren, grandparents, uncles, aunts, nieces, nephews, brothers and sisters (and their spouses).

[2] At present, DRL § 237, the statute which provides for the payment of fees to the non-monied spouse (indeed, it is now a rebuttable presumption) does not extend to litigation under DRL § 72. Accordingly, the non-monied parent cannot seek an award of counsel fees from a relative seeking custodial or access rights under DRL § 72. A change in this omission should be considered, particularly in connection with any expansion of DRL § 72.

financially and emotionally draining, matrimonial and family law litigants should not be placed in the untenable position of having to defend themselves against these claims.

AN ALREADY OVERBURDENED COURT SYSTEM WILL BECOME EVEN FURTHER BURDENED

Moreover, the court system is currently overwhelmed with the volume of cases it must handle while ensuring that all litigants are afforded due process of law. This bill, as currently written, has the potential to open the courts to a significant influx of applications seeking custodial rights by relatives that may, in many cases, be designed to harass a parent and drain his or her resources in unnecessary litigation that will not serve the best interests of the children involved. Victims of domestic violence and members of immigrant communities living in extended family household compositions are especially vulnerable to this type of abuse of the legal process. Not only would the litigants who must defend against these applications by relatives suffer, other family law litigants in the court system would endure lengthier delays in the resolution of their cases as a result of the increased time required for judges to hold hearings on whether extraordinary circumstances exist for any number of extended family members to obtain custodial rights.

FURTHER STUDY TO MEET THE STATE JUSTIFICATION WITHIN THE FAMILY COURT ACT IS WARRANTED

The laudable goals of this proposed legislation would be more properly met through amendment, with appropriately tailored language, to Article 10 of the Family Court Act. It is not necessary to expand the scope of individuals entitled to petition for custodial rights to prevent children from being placed in foster care. The interests of children may be better served by ensuring that available relatives have notice and can participate in litigation where the court has determined that neither parent can adequately care for the children.

Therefore, we urge the legislature to consider the unintended consequences of this bill and take a more circumspect approach. We believe that the legislature can and should address the importance of notice to proceedings where children are abused or neglected by both parents to relatives whose homes are available for placement in order to ensure the best possible placements for vulnerable children potentially caught in the foster care system. However, this reform should be achieved through narrowly-tailored legislation rather than broad amendments to DRL § 72 that are too susceptible to abuse of the legal process.

For the foregoing reasons, the Matrimonial Law Committee of the New York City Bar Association opposes the proposed amendments set forth in A.7189-A/S.2094-A

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