



**NEW YORK
CITY BAR**

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

REPORT ON LEGISLATION BY THE COUNCIL ON CHILDREN

**A.7598
S.5456**

**M. of A. Paulin
Sen. Savino**

AN ACT to amend the family court act and the social services law, in relation to notice of indicated reports of child maltreatment and changes of placement in child protective and voluntary foster care placement and review proceedings; and to repeal certain provisions of the family court act, in relation to technical changes thereto.

THIS BILL IS APPROVED

The Council on Children of the New York City Bar Association supports the enactment of A.7598/S.5456 (“the Bill”). Changing placements can cause serious trauma for children in foster care. Emotional ties are severed when a child is moved from a foster home. Because a change in placement (particularly a long term placement, a placement with a relative, or a placement in a pre-adoptive home) is one of the most significant decisions that can be made affecting a child in foster care, the right to effective assistance of counsel is significantly undermined when a placement is changed without providing the child’s attorney and the parents’ attorneys with notice of a planned change and an opportunity to be heard regarding the plan.

The child’s attorney and the parents’ attorneys each play a critical role in proceedings pertaining to a child’s foster care placement. Each brings a different perspective to the case, which can be used to help reduce the distress caused by changing a child’s foster care placement. When all of the parties are notified of the intent to change a child’s placement, they may identify services that could avert the need to move the child, identify family members who could care for the child, or identify other appropriate foster care placements where the child’s needs may be better met. If a transfer of placement is nevertheless indicated, the child’s attorney or parents’ attorneys may provide information regarding the child’s schooling or community ties to ameliorate the transition to a new placement. The federal Fostering Connections to Success and Increasing Adoptions Act of 2008 mandates that a child’s school placement remain stable despite placement changes, if it is in the child’s best interests to remain in the same school. The child’s and parents’ attorneys must have notice that a placement change is contemplated to ensure the requirements of the Fostering Connections Act are being considered and every effort made to assure the child’s educational stability.

A similar bill was vetoed by the prior governor last session (S.5266/A.8418) on the grounds that it presented an unnecessary burden on caseworkers. The current bill has addressed these concerns by providing for electronic notification and by not requiring that the notification be filed with the Court. Indeed, as an indication of how important counsel notification is in these

cases, subsequent to the veto the New York State Office of Children and Family Services issued an administrative directive "Notice of Placement Change to Attorneys for Children," (Administrative Directive #10-0CFS-ADM-16), which requires that a child's attorney be notified if there is to be any change in that child's placement in foster care. Similarly, New York City Administration for Children's Services issued a memorandum entitled "Notice of Placement Change to Attorneys for Children", which requires the same notification. Both directives, however, omit notice to the attorney for the parent.

This legislation will make certain that all parties have all relevant information so that the best planning possible is done for children in foster care. The Bill requires notification at least 10 days in advance of a planned transfer and permits such notice to be done electronically. The Bill does not require that a hearing be held each time a change in placement is contemplated. Indeed, the Bill does not require that the transfer notification be filed with the Court. Permitting notification by electronic means will allow effective notification at little or no cost. Providing all of the relevant parties with prior notice of a planned move represents an effective means to minimize needless or counter-productive transfers, and to pursue ameliorative services when a placement change is necessary.

By improving the efficiency with which information is shared, this legislation may result in fiscal benefits to the state. The tremendous cost of maintaining children in new or more restrictive placements can often be avoided if attorneys receive timely notification of such planned moves. The costs incurred in connection with providing additional services to address the trauma experienced by children who are unnecessarily moved from foster home to foster home can be averted if the attorneys receive timely notification prior to the transfer. And, all of the administrative costs incurred in connection with changing a foster care placement – and the extra work that must be done by the caseworkers to transfer the case to a new caseworker, to ensure that the child is comfortably settled in a new home, to physically move the child and her belongings from place to place, to either enroll the child in a new school near the new foster home (or make transportation arrangements to keep the child in her current school) pale in comparison to the small investment of time that the worker must make to identify the child's and parents' attorneys, notify the attorneys of the change in placement, and discuss what can be done to avoid the placement change or to ensure the child's comfort and safety.

Finally, the Bill also requires notification to the child's and parents' attorneys when there has been an indicated report or abuse or maltreatment in the foster home. Such notification is for the benefit of the child. The child's and the parents' attorneys should always be made aware of any safety issues in the foster home. As such, we support the provisions of the bill requiring notification under these circumstances.

For these reasons, the Council on Children supports the Bill and urges its passage.

June 2011