

Memorandum in Opposition

COMMITTEE ON CHILDREN AND THE LAW

Children # 21

February 25, 2020

S. 7506-A, Part M
A. 9506-A, Part M

By: BUDGET
By: BUDGET
Senate Committee: Finance
Assembly Committee: Ways and Means
Effective Date: Immediately

THE COMMITTEE ON CHILDREN AND THE LAW OPPOSES THIS LEGISLATION, IN PART

Re: Article VII Legislation, Education, Labor & Family Assistance (ELFA) Part M

Part M of the Article VII ELFA legislation is intended to codify some of the provisions of the federal Family First Act that require that each child who is placed in congregate care is evaluated by an independent assessor and found to require placement in a Qualified Residential Treatment Program (“QRTP”), which is provided through accredited residential settings that meet certain heightened requirements. However, the Article VII legislation requires that, if the independent assessor finds that a QRTP is not necessary for the child, the Family Court can only disapprove the placement in a QRTP. The Family Court is not allowed to exercise its judgment or discretion. As a result, the Family Court Judge must order that the child be removed from the placement, and the Local District of Social Services (“LDSS”) must effectuate this move within 30 days. Such a requirement interferes with the entire notion of judicial supervision of foster care placements and the independence of the judiciary. The proposal would allow a judge to be overruled by an assessor. Since the federal law does not require such a result, New York’s provision could violate federal requirements that the courts supervise all foster care placements, and could jeopardize federal reimbursement for all foster care placements.

There will be children for whom no family foster care setting is available, and who will be harmed by the removal from congregate care. New York has developed an elaborate system for the Family Court to make these decisions, which includes input from all assessors, and attorneys for the LDSS, the child, and the parents. That system will produce the best results for children.

Part M should be amended to explicitly state that the Family Court has the authority to either approve or disapprove a child's placement in a QRTP, informed by, but not restricted to, the findings of the assessment, and furthermore to remove the language stating that OCFS or the LDSS with legal custody of the child must remove the child from the QRTP setting within 30 days if the independent assessor does not deem that placement appropriate.

Based on the foregoing, NYSBA's Committee on Children and the Law **OPPOSES** Part M of this legislation.