

Memorandum in Support

COMMITTEE ON CHILDREN AND THE LAW

Children #5

May 3, 2019

S. 3562

By: Senator Montgomery

A. 4331

By: M. of A. Hevesi

Senate Committee: Children and Families

Assembly Committee: Children and Families

Effective Date: Immediately

AN ACT to amend the social services law, in relation to the adoption subsidies provided for disabled or hard to place children.

LAW AND SECTIONS REFERRED TO: Section 453 of the Social Services Law.

THE COMMITTEE ON CHILDREN AND THE LAW SUPPORTS THIS LEGISLATION

New York State's Social Services Law Section 453 addresses adoption subsidies for New York's "handicapped" or "hard to place" children adopted from foster care. Specifically, Section 453 provides an adoption subsidy to adoptive parents who were previously receiving a foster care subsidy, so that they can adopt a child and continue to provide a permanent home for that child without losing helpful financial assistance. Unfortunately, in New York State and elsewhere, adoptions from foster care do not always result in permanent homes for former foster youth and any such financial subsidy, including "broken adoptions" are ripe for financial misappropriations or underlying subsidy funds.

"Broken Adoptions" occur when a child is still legally adopted, but functionally no longer cared for by his or her adoptive parent for a variety of reasons. Young people who have suffered broken adoptions may find themselves in the direst of situations: returned to foster care, homeless, **abandoned in a residential placement** or incarcerated; others may have reunited with a biological parent whose rights were terminated. Few find themselves in the custody or guardianship of another caring adult, who provides a home for them but often does not receive any additional financial support and the support funds have not been reallocated from the "broken adoption." And the state may be providing necessary alternate housing placements for the benefits and services to the children of broken adoptions, it often concurrently provides a subsidy to the adoptive parents **with whom they no longer live.**

Many children who experience broken adoptions are forced to rely on some form of public assistance until they reach adulthood and beyond. **Others live full-time in residential placements fully funded by the state through Medicaid, the department of social services and their local school district.** Also, these young people frequently have complex needs requiring costly services, such as runaway and homeless youth services, and therapy and substance abuse counseling

Adoption subsidy payments are made through a contract between the adoptive parent and the New York State Office of Child and Family Services (“OCFS”) or the New York City Administration for Children’s Services (“ACS”). These subsidies can total up to over \$1,900 per month per adopted child, and continue until the child’s twenty-first birthday. In New York State, 97.8 percent of parents who adopt children from foster care receive subsidy payments to support those adopted children.

Under current New York State law, few mechanisms exist to ensure that when an adoption breaks the adoption subsidy continues to benefit the adopted child for whose care it was intended. At present, transfer of the subsidy to a new guardian or custodian, or to a child over 18 but under 21, can only occur upon the death of an adoptive parent which is an insufficient list of occurrences of when such transfer should occur. Further, New York State Family Courts lack the jurisdiction to vacate the adoption subsidy or order OCFS or ACS to assign the rights to the subsidy from the adoptive parent to the individual who is actually caring for the formerly adopted child. In cases in which the child is under eighteen, an adoptive parent in New York can even return his or her adopted child to foster care under a “Voluntary Placement Agreement” without relinquishing the subsidy for the child’s care.

The Committee on Children and Law supports the appropriate expansion of the exception to Social Services Law Section 453 beyond the death of an adoptive parent, to prevent the monthly adoption subsidy from being paid to living adoptive parents who are no longer providing care and maintenance for the children they have adopted. This bill takes an important step toward ensuring that the subsidy is paid for the benefit of the child, as intended, and that scarce resources are appropriately allocated.

Based on the forgoing, the New York State Bar Association’s Committee on Children and the Law **SUPPORTS** this legislation.