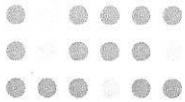


LawyersForChildren

THE LAWYERS FOR CHILDREN FOUNDATION, INC. 100 N. ZEEB RD. SUITE 200, ALBANY, NY 12207-1000



Executive Director

Karen J. Freedman

General Counsel

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May 26, 2021

MEMORANDUM IN OPPOSITION

S2165/A1355

Lawyers For Children ("LFC") is a not-for-profit legal corporation dedicated to protecting the rights of individual children in court proceedings in New York and compelling system-wide child welfare reform. Founded in 1984, LFC provides free legal and social work services to children in cases involving foster care, abuse, neglect, termination of parental rights, adoption, guardianship, custody, visitation and delinquency. This year, LFC will provide services to children and youth in over 3,000 family court and supreme court proceedings.

LFC OPPOSES THE BILL FOR THE FOLLOWING REASONS

New York statute and case law have long operated to fulfill the twin goals of deferring to a parent's decision-making authority with respect to their children's contact with their grandparents (consistent with the Supreme Court's decision in *Troxell v. Granville*), and serving the best interest of the children. This bill appears to be a thinly veiled attempt to undo that balance and prevent the courts from ever awarding visitation to a child and grandparent over the objection of the child's parent. In providing that "visitation may only be ordered in circumstances in which the child's health, safety or welfare would be adversely affected by the denial of visitation," the bill renders it practically impossible for a grandparent to prevail on a visitation petition. Children who have close, loving relationships with their grandparents may be negatively impacted when contact is terminated, but it is unlikely that that impact would ever rise to the level of an adverse impact upon the child's "health, safety or welfare."

The visitation statute should not prohibit assignment of a "guardian ad litem" ("GAL") until after standing has been established, as proposed in this bill. Because standing turns on the question of whether "equity would see fit to intervene," it is crucial for the child's voice/position to be heard in the standing inquiry -- through the rare appointment of a GAL or (more typically) assignment of an attorney for the child (formerly known as a "law guardian") who is charged with representing the child's interests and wishes before the court.

The proposed requirement that "the petitioner must demonstrate that he or she has no reported history of domestic violence" is also problematic. Because it is virtually impossible to prove the absence of a history, this requirement would improperly place the burden of proving a negative upon the petitioner. This burden is made infinitely more onerous by the failure to define what is meant by a "reported" history and improperly includes unsubstantiated reports that may have been falsely made.

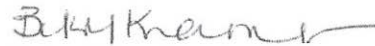
Furthermore, in accordance with the Laws of 2008, prior to issuing any order of custody or visitation, the Court is required to search the statewide registry of Orders of Protection, the Sex Offender Registry, and the Family Court's child protective and warrant records relative to all parties requesting custody and visitation. This requirement is sufficient to satisfy the concerns regarding domestic violence, and also renders the proposed addition of language in this statute regarding those searches unnecessary.

Our long-standing experience representing children in custody and visitation matters does not comport with the Sponsor's understanding that "parents who do not allow grandparents to visit their children for safety reasons – because a grandparent is a convicted sex offender or felon, for example – are often forced to pay tens of thousands of dollars in legal fees to make multiple court appearances necessary to answer grandparents' lawsuits." Grandparent visitation cases are relatively rare, and substantiated allegations of abuse or criminal history that would pose a danger to the child are addressed appropriately under the current statutory scheme.

For these reasons, we are OPPOSED to this bill.



Karen Freedman
Executive Director



Betsy Kramer
Public Policy Project Director