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PUBLIC HEARING

before

SENATE CHILDREN'S SERVICES COMMITTEE

S-2580, S-2577, and S-2595

(Discussion to Amend Termination of Parental
Rights Law S-2580 and Consideration of
Bills S-2577 and S-2595)

April 30, 1990
Room 407
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

- Senator Catherine A. Costa, Chairman
- Senator Gabriel M. Ambrosio, Vice Chairman
- Senator William L. Gormley
- Senator Wynona M. Lipman
- Senator Donald T. DiFrancesco

ALSO PRESENT:

- Michele LeBlanc
Office of Legislative Services
Aide, Senate Children's Services Committee

* * * * *

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Chairman

GABRIEL M. AMBROSIO
Vice-Chairman

WYNONA M. LIPMAN
DONALD T. DIFRANCESCO
WILLIAM L. GORMLEY

New Jersey State Legislature
SENATE CHILDREN'S SERVICES COMMITTEE
STATE HOUSE ANNEX, CN-068
TRENTON, NEW JERSEY 08625-0068
(609) 292-1646

COMMITTEE NOTICE

**TO: MEMBERS OF THE SENATE CHILDREN'S SERVICES
COMMITTEE**

FROM: SENATOR CATHERINE A. COSTA, CHAIRMAN

SUBJECT: COMMITTEE MEETING - April 30, 1990

*The public may address comments and questions to Michele Leblanc,
Committee Aide, or make bill status and scheduling inquiries to Felice Astor,
secretary, at (609) 292-1646.*

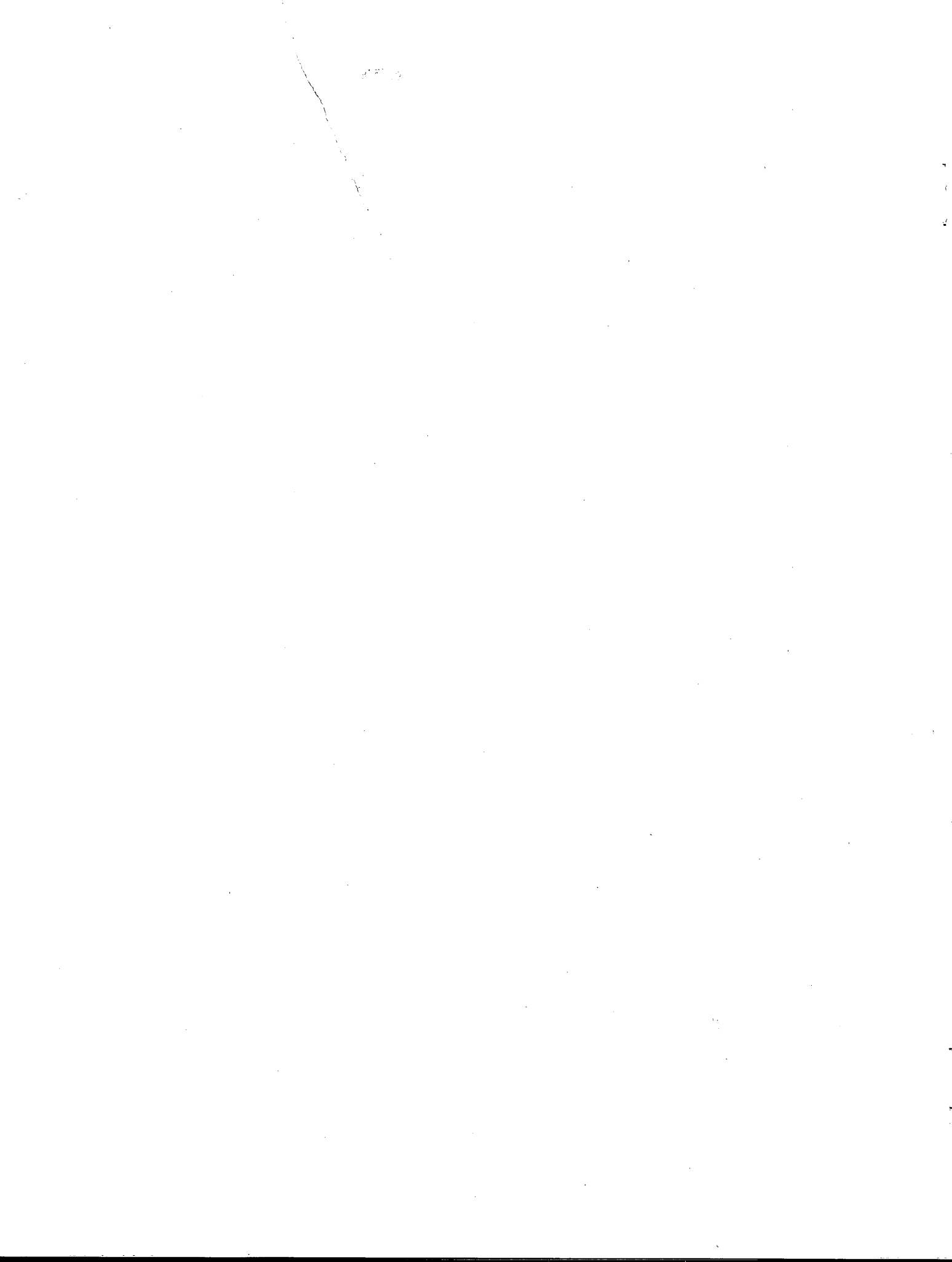
The Senate Children's Services Committee will meet on **Monday, April 30, 1990 at 10:00 A.M.** in Room 407 of the State House Annex to consider the following bills:

S-446 DiFrancesco	Establishes a respite care program for foster parents and appropriates \$1,000,000.
S-1212 Ambrosio	Appropriates \$60,000 to Bergen County Task Force on Youth Suicide Prevention.

The Senate Children's Services Committee will also hold a public hearing immediately following the committee meeting to discuss the following bills:

S-2577 Costa (pending referral)	Provides representation for indigent persons in termination of parental rights proceedings.
S-2580 Costa	Amends the termination of parental rights law.
S-2595 Costa (pending introduction)	Limits the repeated placement of children in foster care system.

Issued 4/12/90



STATE OF NEW JERSEY

INTRODUCED APRIL 5, 1990

By Senator COSTA

1 AN ACT providing for legal representation for indigent persons in
2 proceedings involving the termination of parental rights
3 ¹[and],¹ supplementing Title 30 of the Revised Statutes ¹and
4 making an appropriation therefor¹.

5
6 BE IT ENACTED by the Senate and General Assembly of the
7 State of New Jersey:

8 1. ¹[a.]¹ In any proceeding for the termination of parental
9 rights or for guardianship the court shall ¹appoint a law guardian
10 through the Office of the Public Defender to represent the child.
11 The court shall¹ advise the ¹[defendants who have been found by
12 the court to be indigent, that they may apply for an attorney
13 through the Office of the Public Advocate. The Public Advocate
14 may, by regulation, provide that parental representation cases be
15 handled by a legal service assistance program presently operating
16 under an agreement with the Department of Community Affairs
17 The court shall also appoint a law guardian through the Office of
18 the Public Defender to represent the child or children] defendant
19 parent that if he is indigent he may apply to Legal Services of
20 New Jersey, Inc. for representation in a manner designated by
21 Legal Services of New Jersey, Inc.¹

22 ¹[b. The Department of the Public Advocate, Office of the
23 Public Defender, is authorized, in any proceedings brought for the
24 termination of parental rights or for guardianship to provide for
25 any child the services of a law guardian as defined by P.L.1974,
26 c.119 (C.9:6-8.21).]¹

27 2. ¹[Legal service assistance programs presently operating
28 under an agreement with the Department of Community Affairs
29 may apply to the Public Advocate to receive financial assistance
30 to provide legal representation as provided in this act. The
31 Public Advocate shall determine the amount of financial
32 assistance to be provided to a qualified legal service program.]
33 There is appropriated from the General Fund \$1,000,000 to carry
34 out the purposes of this act.

35 a. Of this amount, \$500,000 is appropriated to the Department
36 of the Public Advocate to provide representation to children
37 pursuant to this act, to the extent the appropriation permits.

38 b. An amount of \$500,000 is appropriated to the Department
39 of Community Affairs to contract with Legal Services of New

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SCH committee amendments adopted May 24, 1990.

1 Jersey, Inc. to provide representation to indigent parents involved
2 with child placements and proceedings under the provisions of
3 Title 30 of the Revised Statutes and pursuant to this act , to the
4 extent the appropriation permits. Legal Services of New Jersey,
5 Inc. may provide this representation directly or by subcontract
6 with local legal services programs.¹

7 3. This act shall take effect immediately.

8

9

10

CIVIL JUSTICE

11

12

Provides representation for indigent persons in termination of
parental rights proceedings; appropriates \$1,000,000.

13

SENATE CHILDREN'S SERVICES COMMITTEE

STATEMENT TO

SENATE, No. 2577

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 24, 1990

The Senate Children's Services Committee favorably reports Senate Bill No. 2577 with committee amendments.

As amended, the bill provides indigent parents with legal representation in actions to terminate their parental rights through the Office of the Public Advocate.

Presently, the law provides for representation by the Public Advocate in noncriminal actions involving alleged cases of child abuse or neglect pursuant to N.J.S.A.9:6-8.43. However, it is not clear whether this provision governs actions involving termination of parental rights. This bill seeks to clarify this ambiguity.

In Youth and Family Services v D.C., 219 N.J. Super. 644 (A.D. 1987), the Appellate Division ruled that court-appointed counsel for indigent clients in parental termination cases are not entitled to compensation by a state entity. In that case DYFS commenced a guardianship action pursuant to N.J.S.A.30:4C-15 et seq. to terminate the parental rights of D.C. and M.C. Three attorneys were appointed by the court to represent the interests of D.C., M.C. and their three children, respectively. After an 18-day bench trial counsel petitioned the court for an order compelling the Public Advocate or Attorney General to pay their reasonable attorney fees. The trial court denied the petition relying on Crist v. N.J. Div. Youth and Family Services, 135 N.J. Super 573 (A.D. 1975) which held that N.J.S.A.30:4C-1 et seq., does not provide for the assignment of counsel for indigent parents or for the payment of compensation to their attorneys. This is in contrast to N.J.S.A.9:6-8.71 which appropriates funds for compensating counsel in actions brought under Chapter 6 of Title 9 of the Revised Statutes, Child Abuse or Neglect.

The bill provides that parental representation cases may be handled by a legal service program presently operating under an agreement with the Department of Community Affairs and that the court must appoint a law guardian for the child.

The committee amended the bill to clearly delineate that the Office of the Public Defender would be responsible to represent children during termination of parental rights proceedings, while Legal Services of New Jersey, Inc. would be responsible to represent the indigent parents of these children. The bill was also amended to include an appropriation of \$1,000,000. Of this sum, \$500,000 would be appropriated to the Department of the Public Advocate to provide legal representation to children, to the extent the appropriation permits and \$500,000 would be appropriated to the Department of

Community Affairs to contract out with Legal Services of New Jersey, Inc. to provide representation to parents, to the extent the appropriation permits. Legal Services of New Jersey, Inc. could provide this representation directly or through subcontract with local legal services programs.

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 2580

STATE OF NEW JERSEY

ADOPTED OCTOBER 1, 1990

Sponsored by Senator COSTA

1 AN ACT concerning the termination of parental rights, amending
2 and supplementing P.L.1951, c.138.
3

4 BE IT ENACTED *by the Senate and General Assembly of the*
5 *State of New Jersey:*

6 1. Section 11 of P.L.1951, c.138 (C.30:4C-11) is amended to
7 read as follows:

8 11. Whenever it shall appear that any child within this State is
9 of such circumstances that [his] the child's welfare will be
10 endangered unless proper care or custody is provided, an
11 application setting forth the facts in the case may be filed with
12 the [Bureau of Childrens] Division of Youth and Family Services
13 by a parent or other relative of such child, by a person standing in
14 loco parentis to such child, by a person or association or agency
15 or public official having a special interest in such child or by the
16 child himself, seeking that the [Bureau of Childrens Services]
17 division accept and provide such care or custody of such child as
18 the circumstances may require. Such application shall be in
19 writing, and shall contain a statement of the relationship to or
20 special interest in such child which justifies the filing of such
21 application. The provisions of this section shall be deemed to
22 include an application on behalf of an unborn child when the
23 prospective mother is within this State at the time of application
24 for such services.

25 Upon receipt of an application as provided in this section, the
26 [Bureau of Childrens Services] division shall verify the statements
27 set forth in such application and shall investigate all the matters
28 pertaining to the circumstances of the child. If upon such
29 verification and investigation it shall appear (a) that the welfare
30 of such child will be endangered unless proper care or custody is
31 provided; (b) that the needs of such child cannot properly be
32 provided for by financial assistance as made available by the laws
33 of this State; (c) that there is no person legally responsible for
34 the support of such child whose identity and whereabouts are
35 known and who is willing and able to provide for the care and
36 support required by such child; and (d) that such child, if suffering
37 from a mental or physical disability requiring institutional care,
38 is not immediately admissible to any public institution providing

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 such care; then the [Bureau of Childrens Services] division may
2 accept and provide such care or custody as the circumstances of
3 such child may require.

4 (cf: P.L.1962, c.197, s.14)

5 2. Section 12 of P.L.1951, c.138 (C.30:4C-12) is amended to
6 read as follows:

7 12. Whenever it shall appear that the parent or parents,
8 guardian, or person having custody and control of any child within
9 this State is [grossly immoral or] unfit to be entrusted with the
10 care and education of such child, or shall fail to provide such
11 child with proper protection, maintenance and education, or is [of
12 such vicious, careless or dissolute habits as to endanger]
13 endangering the welfare of such child, a written or oral complaint
14 may be filed with the [Bureau of Childrens] Division of Youth and
15 Family Services by any person or by any public or private agency
16 or institution interested in such child. When such a complaint is
17 filed by a public or private agency or institution, it shall be
18 accompanied by a summary setting forth the reason for such
19 complaint and other social history of the child and his family's
20 situation which justifies such complaint: or, if this is not feasible,
21 such summary shall be made available to the [Bureau of
22 Childrens] Division of Youth and Family Services as soon
23 thereafter as possible.

24 Upon receipt of a complaint as provided in this section, the
25 [Bureau of Childrens] Division of Youth and Family Services shall
26 investigate, or shall cause to be investigated, the statements set
27 forth in such complaint. If the circumstances so warrant, the
28 parent, parents, guardian, or person having custody and control of
29 the child shall be afforded an opportunity to file an application
30 for care, as provided in section 11 of [this act] P.L.1951, c.138,
31 (C.30:4C-11). If the parent, parents, guardian, or person having
32 custody and control of the child shall refuse to permit or shall in
33 any way impede investigation, and the [bureau] division
34 determines that further investigation is necessary in the best
35 interests of the child, the [bureau] division may thereupon apply
36 to the [Juvenile and Domestic Relations] Family Part of the
37 Chancery Division of the Superior Court [of] in the county where
38 the child resides, for an order directing the parent, parents,
39 guardian, or person having custody and control of the child to
40 permit immediate investigation. The court, upon such
41 application, may proceed to hear the matter in a summary
42 manner and if satisfied that the best interests of the child so
43 require may issue an order as requested.

44 If, after such investigation has been completed, it appears that
45 the child requires care and supervision by the [Bureau of
46 Childrens] Division of Youth and Family Services but the parent,
47 parents, guardian, or person having custody and control of the
48 child continue to refuse to apply for care in the manner provided

1 in section 11 of P.L.1951, c.138 (C.30:4C-11), the [bureau]
2 division may apply to the [Juvenile and Domestic Relations]
3 Family Part of the Chancery Division of the Superior Court [of]
4 in the county where the child resides for an order making the
5 child a ward of the court and placing such child under the care
6 and supervision of the [Bureau of Childrens] Division of Youth and
7 Family Services.

8 The court, at a summary hearing held upon notice to the
9 [Bureau of Childrens] Division of Youth and Family Services, and
10 to the parent, parents, guardian, or person having custody and
11 control of the child, if satisfied that the best interests of the
12 child so require, may issue an order as requested, which order
13 shall have the same force and effect as the acceptance of a child
14 for care by the [bureau] division as provided in section 11 of [this
15 act] P.L.1951, c.138 (C.30:4C-11); provided, however, that such
16 order shall not be effective beyond a period of 6 months from the
17 date of entry unless the court, upon application by the [Bureau of
18 Childrens] Division of Youth and Family Services, at a summary
19 hearing held upon notice to the parent, parents, guardian, or
20 person having custody of the child, extends the time of the order.

21 Immediately after the court's order and while the child is in
22 the division's care, the division shall initiate a search for the
23 child's natural mother or father, if they are not known to the
24 division. The search shall be initiated within 30 days of the court
25 order. The search will be completed when all sources contacted
26 have either responded to the inquiry or failed to respond within
27 45 days. The results shall be valid for six months after the date
28 it was completed.

29 (cf: P.L.1962, c.197, s.15)

30 3. Section 15 of P.L.1951, c.138 (C.30:4C-15) is amended to
31 read as follows:

32 15. Whenever (a) it appears that a court wherein a complaint
33 has been proffered as provided in chapter 6 of Title 9 of the
34 Revised Statutes, has entered a conviction against the parent or
35 parents, guardian, or person having custody and control of any
36 child because of abuse, abandonment, neglect of or cruelty to
37 such child; or (b) [it appears that any child has been adjudged
38 delinquent by a court of proper jurisdiction in this State; or]
39 (Deleted by amendment P.L.19.., c..... (C.....)) (c) it appears
40 that the best interests of any child under the care or custody of
41 the [Bureau of Childrens] Division of Youth and Family Services
42 require that he be placed under guardianship; or (d) it appears
43 that a parent or guardian of a child, following the acceptance of
44 such child by the [Bureau of Childrens Services] division pursuant
45 to sections 11 or 12 of [this act] P.L.1951, c.138 (C.30:4C-11 and
46 12), or following the placement or commitment of such child in
47 the care of an authorized agency, whether in an institution or in a
48 foster home, and notwithstanding the diligent efforts of such

1 agency to encourage and strengthen the parental relationship, has
2 failed [substantially and continuously or repeatedly] for a period
3 of [more than] 1 year [to maintain contact with and plan for the
4 future of the child, although physically and financially able to do
5 so] to remove the circumstances or conditions that led to the
6 removal or placement of the child, notwithstanding the division's
7 diligent efforts to assist the parent or guardian in remedying the
8 conditions, and that additional services available from the
9 division within program and fiscal constraints will not enable the
10 child to be reunited with the parent or guardian; a petition,
11 setting forth the facts in the case, may be filed with the [juvenile
12 and domestic relations court of] Family Part of the Chancery
13 Division of the Superior Court in the county where such child may
14 be at the time of the filing of such petition. A petition as
15 provided in this section may be filed by any person or any
16 association or agency, interested in such child, or by the [Bureau
17 of Childrens Services] division in the circumstances set forth in
18 items (c) and (d) hereof.

19 (cf: P.L.1962, c.197, s.18)

20 4. Section 17 of P.L.1951, c.138 (C.30:4C-17) is amended to
21 read as follows:

22 17. a. When a petition is filed under section 15 [hereof] of
23 P.L.1951, c.138 (C.30:4C-15), by a person, association or agency
24 other than the [Bureau of Childrens] Division of Youth and Family
25 Services, the court, in addition to causing service to be made
26 upon the parent, parents, guardian or person having custody and
27 control of such child in accordance with rules of court, shall also
28 cause a copy of the petition and notice of the time and place of
29 hearing to be served on or mailed to the [Bureau of Childrens
30 Services] division at least 20 days before the time of such hearing.

31 b. When a petition is filed under section 15 of P.L.1951, c.138
32 (C.30:4C-15) by a person, association or agency, the court shall
33 cause a copy of the petition to be served upon the absent parent
34 of the child. The notice shall inform the parent of the purpose of
35 the action and of the right to file written objections to the
36 guardianship proceedings within 20 days after notice is given in
37 the case of a resident, and 35 days in the case of a nonresident,
38 of this State.

39 If personal service of the notice cannot be effected because
40 the whereabouts of an absent parent are unknown, the court shall
41 determine that an adequate effort has been made to serve notice
42 upon the parent if the plaintiff has:

43 (1) Sent the notice by regular mail and by certified mail return
44 receipt requested, to the last known address of the parent;

45 (2) Made a discreet inquiry among any known relatives, friends
46 and current or former employers of the parent;

47 (3) Unless otherwise restricted by law, made direct inquiries,
48 using the party's name and last known or suspected address, to

1 the local post office, the Division of Motor Vehicles in the
2 Department of Law and Public Safety, the county welfare
3 agency, the municipal police department, the Division of State
4 Police in the Department of Law and Public Safety, the county
5 probation office, the Department of Corrections, and any other
6 social service or law enforcement agency known to have had
7 contact with the parent, or the equivalent agencies in other
8 states, territories or countries.

9 Failure to receive a response to the inquiries made pursuant to
10 paragraphs (2) and (3) of this subsection within 45 days shall
11 constitute a negative response.

12 c. In any case in which the identity of an absent parent cannot
13 be determined or the known parent of a child is unable or refuses
14 to identify the other parent, and the court is unable from other
15 information before the court to identify the other parent, service
16 on that parent shall be waived by the court.

17 d. Whenever a petition is filed under section 15 [hereof] of
18 P.L.1951, c.138 (C.30:4C-15), and there shall be filed with such
19 petition a statement or statements made under oath and attesting
20 that the best interests of the child require that he be placed
21 under the guardianship of the [Bureau of Childrens Services]
22 division immediately and pending final hearing, the court, at a
23 special summary hearing held upon notice to the [Bureau of
24 Childrens Services] division, may make an interlocutory order
25 committing such child to the [Bureau of Childrens Services]
26 division until a final hearing on the petition. Such interlocutory
27 order shall have the same force and effect as an order of
28 commitment provided for in section 20 [hereof] of P.L.1951,
29 c.138 (C.30:4C-20).

30 (cf: P.L.1962, c.197, s.19)

31 5. Section 19 of P.L.1951, c.138, (C.30:4C-19), is amended to
32 read as follows:

33 19. Adjournment of any hearing on a petition filed under
34 section [fifteen hereof] 15 of P.L.1951, c.138 (C.30:4C-15) shall
35 not exceed a total period of [ninety] 45 days.

36 (cf: P.L.1951, c.138, s.19)

37 6. (New section) In any case in which the Division of Youth
38 and Family Services accepts a child in its care or custody, the
39 division shall initiate a search for relatives who may be willing
40 and able to provide the care and support required by the child. A
41 home evaluation study of the relative's home shall be conducted
42 in accordance with procedures established by the division. The
43 search shall be initiated within 30 days of the division's
44 acceptance of the child in its care or custody. The search will be
45 completed when all sources contacted have either responded to
46 the inquiry or failed to respond within 45 days. The results
47 shall be valid for six months after the date it was completed.

48 7. (New section) The division shall initiate a petition to

1 terminate parental rights on the grounds of the "best interest of
2 the child" pursuant to subsection (c) of section 15 of P.L.1951,
3 c.138 (C.30:4C-15) if the following standards are met:

4 a. The child's health and development have been or will
5 continue to be endangered by the parental relationship;

6 b. The parent is unwilling or unable to eliminate the harm
7 facing the child or is unable or unwilling to provide a safe and
8 stable home for the child and the delay of permanent placement
9 will add to the harm;

10 c. The division has made diligent efforts to provide services to
11 help the parent correct the circumstances which led to the
12 child's placement outside the home and the court has considered
13 alternatives to termination of parental rights; and

14 d. The continuation of the parent and child relationship clearly
15 diminishes the child's prospects for early integration into a
16 stable and permanent home.

17 As used in this section and in section 15 of P.L.1951, c.138
18 (C.30:4C-15) "diligent efforts" mean reasonable attempts by an
19 agency authorized by the division to assist the parents in
20 remedying the circumstances and conditions that led to the
21 placement of the child and in reinforcing the family structure,
22 including, but not limited to:

23 (1) consultation and cooperation with the parent in developing
24 a plan for appropriate services;

25 (2) providing services that have been agreed upon, to the
26 family, in order to further the goal of family reunification; and

27 (3) informing the parent at appropriate intervals of the child's
28 progress, development and health.

29 8. (New section) A final hearing for guardianship shall be held
30 within three months from the date the petition is filed with the
31 family part of the Chancery Division of the Superior Court
32 pursuant to section 15 of P.L.1951, c.138 (C.30:4C-15).

33 9. This act shall take effect immediately.
34
35

36 CHILDREN

37
38 Changes procedures regarding the termination of parental rights.

STATE OF NEW JERSEY

INTRODUCED APRIL 26, 1990

By Senators COSTA, AMBROSIO and LIPMAN

1 AN ACT concerning foster care and supplementing Title 30 of the
2 Revised Statutes.

3
4 BE IT ENACTED by the Senate and General Assembly of the
5 State of New Jersey:

6 1. The Legislature finds and declares that:

7 a. Due to the severity of health and social problems such as
8 AIDS, drug abuse and homelessness, the Division of Youth and
9 Family Services in the Department of Human Services often
10 works with families over a period of many years, and the children
11 of these families often spend a majority of their young lives in
12 foster care; and

13 b. Research has shown that the longer children remain in the
14 foster care system, the greater number of placements they
15 experience. As a result of these multiple placements, from
16 natural family to foster home and from one foster home to
17 another foster home, children develop emotional and
18 psychological problems, making it more difficult for them to
19 develop a positive self-image; and

20 c. For the majority of these ¹["ping-pong"]¹ children,
21 placement in residential treatment facilities becomes the only
22 viable option left to the division because it is more difficult for
23 the division to find adoptive homes for them when, and if,
24 adoption becomes a case goal; and

25 d. The obligation of the State to recognize and protect the
26 rights of children in the child welfare system should be fulfilled
27 in the context of a clear and consistent policy which limits the
28 repeated placement of children in foster care and promotes the
29 eventual placement of these children in stable and permanent
30 homes.

31 2. For purposes of this act, the terms "repeated placement
32 into foster care" and "placed again into foster care" shall apply
33 to a child who has been placed in the custody of the Division of
34 Youth and Family Services for placement in foster care by the
35 family part of the Chancery Division of the Superior Court or as
36 a result of a voluntary placement agreement pursuant to
37 P.L.1974, c.119 (C.9:6-8.21 et seq.), released into the custody of
38 his parents or legally responsible guardian at the conclusion of
39 the placement and is once again temporarily removed from his

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:
¹ Senate SCH committee amendments adopted May 24, 1990.

1 place of residence and placed under the division's care and
2 supervision.

3 3. a. The division shall not treat a child's repeated placement
4 into foster care as an initial placement. The ¹[division shall
5 prepare a report] child's revised placement plan, updated¹ at the
6 time of the child's repeated placement ¹[which summarizes] ,
7 shall summarize¹ the child's prior history with the division
8 regarding previous placements, the findings of the child
9 placement review board, as well as a copy of the court order for
10 the removal of the child from the custody of his parents or
11 guardian. The ¹[report] revised placement plan¹ shall be used by
12 the division when preparing the child's repeated placement plan
13 pursuant to this section.

14 b. Whenever a child is placed again into foster care, the
15 division shall prepare a repeated placement plan which shall
16 ensure the goal of permanency through the safe return of the
17 child to his parents or, if this is not possible, through the State's
18 assumption of guardianship for the purpose of finding the child an
19 adoptive home. The plan shall be prepared within 30 days after
20 the child's repeated placement and submitted to the court. The
21 plan shall be valid for 12 months after the date the child was
22 placed again into foster care.

23 c. The repeated placement plan shall include, but not be
24 limited to:

25 (1) The specific reasons for the repeated placement of the
26 child, including a description of the problems or conditions in the
27 home of the parents or guardian which necessitated the child's
28 removal, and a summary of the efforts made by the division to
29 prevent the child's repeated placement;

30 (2) The specific actions to be taken by the child's parents or
31 guardian to eliminate the identified problems or conditions which
32 were the basis of the child's repeated placement into foster care,
33 which actions shall be taken within a specific time limit agreed
34 upon by the child's caseworker and the parents or guardian;

35 (3) The social services to be provided to the child's parents or
36 guardian, the child and the foster parents during the period the
37 child is in foster care. The purpose of the supportive services
38 shall be to promote the child's best interest and to facilitate his
39 return to his natural home;¹[and]¹

40 (4) ¹An assessment of the division's ability to obtain a child's
41 birth certificate, locate the child's parents for future contact
42 and have access to the child's extended family, in the event that
43 an adoption plan becomes necessary; and

44 (5)¹ A stipulation that the child be placed with his prior foster
45 family, if possible, to provide the child with continuity and
46 stability in his living environment.

47 ¹d. The case of a child placed again into foster care shall be
48 assigned an "adoption potential" case goal and conferenced for
49 adoption by the district office responsible for the child's

1 supervision, and an adoption resource center at the time of the
2 child's repeated placement. The case goal shall be pursued by
3 the division only if the child's parents or guardian do not fulfill
4 the requirements outlined by the division pursuant to paragraph
5 (2) of subsection c. of this section.]¹

6 4. If the parents or guardian of the child are unwilling or
7 unable to remedy the problems or conditions outlined in the
8 child's repeated placement plan within the specified time limit
9 ¹and despite diligent efforts by the division¹, the division shall
10 file a petition for guardianship with the family part of the
11 Chancery Division of the Superior Court pursuant to section 15 of
12 P.L.1951, c.138 (C.30:4C-15).

13 The court shall set a hearing, with notice to all parties, on the
14 guardianship petition within 45 days from the date the petition
15 was filed.

16 ¹[5. A voluntary placement agreement signed by a parent or
17 guardian allowing the division to temporarily remove a child from
18 the parent or guardian's custody shall not be used as a basis for
19 the repeated placement of the child into foster care. If the
20 division believes that there is reasonable cause to suspect that
21 the child's life or health is in imminent danger, the division shall
22 apply for a court order to remove the child from his place of
23 residence pursuant to section 8 of P.L.1974, c.119 (C.9:6-8.28).

24 If the court finds that the child's life or health is not in
25 danger, the court shall order the division to supervise the family
26 and to provide the child and his parents or guardian with
27 supportive services in the home until the court terminates the
28 supervision or until the child reaches the age of 18.]¹

29 ¹[6.] 5.¹ Pursuant to the "Administrative Procedure Act,"
30 P.L.1968, c.410 (C.52:14B-1 et seq.), the Commissioner of Human
31 Services shall adopt all rules and regulations necessary to
32 effectuate the purposes of this act.

33 ¹[7.] 6.¹ This act shall take effect one year after enactment.
34
35

36 CHILDREN

37
38 Limits the repeated placement of children in foster care system.



ASSEMBLY HEALTH AND HUMAN RESOURCES COMMITTEE

STATEMENT TO

[FIRST REPRINT]

SENATE, No. 2595

STATE OF NEW JERSEY

DATED: OCTOBER 29, 1990

The Assembly Health and Human Services Committee favorably reports Senate Bill No. 2595 [1R].

This bill seeks to limit the repeated placement of children in the foster care system. As defined in the bill, "repeated placement into foster care" would apply to a child who has been placed in foster care by the Division of Youth and Family Services (DYFS), released in the custody of his parents at the end of the placement and, then, once again removed from his home by the courts and placed in DYFS' care.

The bill would:

1. Require DYFS to update a child's placement plan at the time of the child's repeated placement. The revised placement plan would summarize the child's prior history, concerning previous placements. The plan would be used by DYFS when preparing the child's repeated placement plan and would also be included in the child's Child Placement Review Plan;

2. Require DYFS to prepare a repeated placement plan when the child reenters the foster care system. The plan would include a statement of DYFS' goal for the eventual placement of the child in an adoptive home, the reasons for the child's repeated placement into foster care, an assessment of the division's ability to obtain a child's birth certificate, locate the child's parents for future contact and have access to the child's extended family, in the event that an adoption plan becomes necessary, and a statement of the duties and responsibilities of DYFS, the child's parents or guardian and the child's foster parents. The plan would also include a stipulation that the child be placed with his previous foster family, if possible; and

3. Require the parents or guardian of a child who has been placed again into foster care to remedy the problems and conditions which led to the child's removal from his home within the specified time limit agreed upon by the child's caseworker and his parents or guardian. If the parents or guardian cannot fulfill the requirements of the repeated placement plan within the specified time and despite the diligent efforts of the division, the division would be required to file a petition for guardianship pursuant to section 15 of P.L.1951, c.138 (C.30:4C-15).



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SENATOR GABRIEL M. AMBROSIO (Vice Chairman): Next we are going to have the public hearing on Senate Bills No. 2577, 2580, and 2595. and the first person to testify is James A. Louis.

J A M E S A. L O U I S: Thank you, Senator. I'm Jim Louis. I'm the Director of Juvenile Programs for the State Public Defender's Office, and I'm here on behalf of the Department of the Public Advocate. I believe copies of our testimony were distributed. In the interest of time, I am certainly not going to go over everything in it. I would like to just simply state for the record, that it is a worthy effort, and one that's sincerely appreciated by our Department; that these three bills have been put on the table. We appreciate the opportunity to talk about them at this stage, before they are ready for a vote, because we think that while each of them is an important statement, an issue relating directly to children's rights, there are some recommendations that we feel might be in order in terms of improving what is on the table before the Legislature, and enacting really significant statutory change.

For example, in S-2580 which deals with the Termination of Parental Rights Law, one thing that we have found in our years of experience in representing children in child abuse/neglect cases -- and, of course, many of those cases are things that lead into Termination of Parental Rights proceedings -- is that everyone operating under our current Termination of Parental Rights statute -- whether it is DYFS, parents or certainly children, and the judges who have to rule in those cases -- is laboring with an enormous burden. We have a law that is ambiguous, that is vague, that is very old, and was probably written in a time when people understood ambiguous, vague language better than they do now. The problem is that there are many areas in that law in terms of the

grounds for Termination of Parental Rights, and other aspects of it, that really need significant improvement.

In terms of addressing the issue of the diligent search, one particular provision that I would like to speak to is that in S-2580, that establishes a requirement for a time limit; a one-year time limit for a diligent search of parents and other relatives. In the section of the law, that is 30:4C-11 that deals with the Division of Youth and Family Services taking children into their custody in the first instance, we think that this provision is inappropriately placed in that section; basically because that section relates to taking children into the Division's custody or care or supervision, very often not even into the physical custody, but simply receiving an application and the Division of Youth and Family Services determining that it may need to provide services on behalf of the child or the family.

And, very often -- most often -- these situations are things that are dealt with relatively quickly. The application comes in, the Division makes its determination, of course even more quickly in the child abuse/neglect cases, and while it is important, we believe that the law should state specifically that the Division should make an effort when it is planning to place a child to find someone like a relative or maybe even a known and caring friend, but to find someone for the child to be placed with who is not a stranger, because of the significant impact that being removed from home and placed in a foreign territory, if you will, has upon children. This is something we see in our daily caseload.

While we feel it's important in that the law should state that there should be an effort by the Division to find such people, the fact is that the one-year time limit is really inapplicable to these sorts of cases because the action must be taken much more quickly. It creates an ambiguity in and of itself in terms of what the Division ought to do pending this

one-year search. It will almost always be something that will require placement, and if a good faith search very quickly cannot find a relative or a family member, then the child may well need to be placed. Obviously the goal in a lot of these cases is not placement at all. So we feel that that ought to be changed and rather that the emphasis for the one-year time limit, or if you will, a presumption that a diligent search for relatives and for missing parents, be put into the various specific sections of the law that deal with the Termination of Parental Rights proceedings.

One thing that needs emphasis here is that part of the reason for this statutory change, I presume, is the requirement that if parental rights are going to be terminated as to a particular child, they must be terminated as to both parents before that child can be free for adoption. And in that process, a significant problem that the Division has or anyone else who is in the business of placing children for adoption has, is that they have to be sure that they have made a diligent effort to find missing parents in order to show the court that that person's parental rights have been terminated or that the person, in fact, does not exist or cannot be found, despite these diligent efforts.

I know that this is a significant problem because of the nature of our law, and again, in its ambiguity and its vagueness, the Division often has to stretch out its diligent search efforts far beyond any time that would be reasonable to the interest of the child, to get this phase of the matter resolved. So that, a presumption of a one-year time limit may well be appropriate although, of course, as with any other automatic provisions of the law, one can certainly imagine situations where it may be appropriate to extend that time where it would not be against the child's best interests.

SENATOR DiFRANCESCO: May I stop you for a second--

MR. LOUIS: Yes.

SENATOR DiFRANCESCO: --with the Chairman's permission?

SENATOR AMBROSIO: Yeah, go ahead.

SENATOR DiFRANCESCO: On this point that you're making that, I think -- I'm quickly reading this-- You're making two points. One is the that investigation should be immediate. Is that right?

MR. LOUIS: Absolutely.

SENATOR DiFRANCESCO: I would think that that's presumed in reading the section. The second point is that this says it shall be completed within one year. In other words, what's wrong with the language in the bill? I don't see the point of it.

MR. LOUIS: Well, the problem with the language in the bill is that it seems inappropriate in the section that is dealing with DYFS' receiving applications for services and making its determination as to whether or not it ought to provide the services.

SENATOR AMBROSIO: You think one year is too long. Is that right?

MR. LOUIS: I think one year is definitely too long there, because I don't think that they would be searching. In that situation, the determining factor is not whether or not they find these people; it's whether or not the services are needed, and if they are needed, then they must provide the services. It is a fine idea to tell them they ought to search for such people if they're going to have to place the child, but it seems that talking about a time limit for that, when in most cases it may not even apply, is sort of an irrelevant provision in that section, and it belongs much better in 34:C-15 and in the sections which follow that which deal with the Termination of Parental Rights. Simply for purposes of clean provisions of the law, I urge the Committee to note -- and everyone else who is here to testify can probably point this out as well or better than I can -- how much trouble has

been engendered over the years since the 1950s when this stuff was enacted, because it's a muddle of language and it really needs to be clarified.

SENATOR GORMLEY: Excuse my ignorance of the area. Under the current law, what does DYFS do today--

MR. LOUIS: Well--

SENATOR GORMLEY: --in terms of--

SENATOR AMBROSIO: Or, what's it supposed to do, is what you mean. (laughter)

SENATOR GORMLEY: What's it supposed to do? I'm going to have two simple questions: What's it supposed to do, and how much are they going to say it costs -- what you want them to do? Let's get down to what this is going to go back-- All right, now you're red. (referring to witness' reaction) Now I know we're getting to the right points.

MR. LOUIS: I'm at a loss to answer those questions, because I, of course, am not here to give the answers for DYFS. However, what I think they are supposed to do under the statutory scheme as it exists today, is that if people come to DYFS and say, "We've got a kid, and this kid has a problem," laying aside the situation in the child abuse or neglect case which comes under a different law, DYFS is supposed to look into the situation, make a determination as to whether or not, indeed, there is something that is needed and something that they can provide.

SENATOR GORMLEY: Give some of the examples of some referrals that would go to DYFS. What cases are we talking about that would go to DYFS?

MR. LOUIS: Well I'd surmise it would be situations like children who are in need of a specific kind of treatment -- residential treatment -- or children who are in need of--

SENATOR GORMLEY: Referrals from the Family Court?

MR. LOUIS: Referrals from the Family Court.

SENATOR GORMLEY: Okay, we're just trying to get this whole chain together.

MR. LOUIS: Well now, I said other than child abuse and neglect because there is a different set of procedures for child abuse and neglect. But now we're at a-- We're back at the point that I made before. Because we have one law that deals with child abuse and neglect, and another law -- this one -- which purports to deal with everything, there's an ambiguity and an uncertainty there as well, because the child abuse and neglect case could well come in through this procedure, and the law is not at all clear what happens when you're proceeding under both. As a matter of fact, most child abuse cases that wind up getting filed in the Family Court -- which is a majority of child abuse cases that come into DYFS-- The minority of child abuse cases that come into DYFS in the first place are brought under both laws. They have different requirements, different procedures, and the matter is really a mess, but I'd like to see it made less messy.

SENATOR DiFRANCESCO: Well other than child abuse and neglect, what are we talking about? What kind of cases--

MR. LOUIS: Well, perhaps they would be in a better position to answer that.

SENATOR DiFRANCESCO: All right.

MR. LOUIS: The cases we see are the child abuse and neglect cases. But in any event, that section, 34:C-11, deals with a much broader universe of situations than those relating to Termination of Parental Rights. And the things that need to be drafted into the law as to procedural requirements and safeguards in Termination of Parental Rights, for the most part, should be placed in those sections that deal with the specific proceedings for Termination of Parental Rights, which come later in that chapter of the statutes.

SENATOR AMBROSIO: Your problem is that the existing law is ambiguous?

MR. LOUIS: Oh, yes. Absolutely.

SENATOR AMBROSIO: You're not saying that these changes complicate it, are you?

SENATOR GORMLEY: Well, except on the one-year--

MR. LOUIS: Well, that one particular change does. The one-year change does, in fact, complicate it even further, I believe.

SENATOR GORMLEY: Do you think the first half helps the current law? Excluding the one-year, does it help the current law?

MR. LOUIS: Well, it doesn't hurt too much. It helps in some cases, it doesn't help in others. Obviously, I would hope that the people who have to carry out this law, if they're not involved in a situation that's going to require placement, are not going to waste their efforts in searching for other people to place the child. If there is no reason to believe that there's a need for a placement, there may be a need for providing services in the home. I simply worry in a universe of finite resources, that this requirement might be read as placing an additional obligation on the staff of the Division of Youth and Family Services to engage in this search for no reason whatsoever. It doesn't require that to me, but I don't know who else is going to be reading this.

SENATOR AMBROSIO: Okay, we could go on and on, but let's move on.

MR. LOUIS: Let me simply point out to the Committee in terms of this bill, something that really is important to consider is, that there is in the hopper-- There was pre-filed in the Legislature in this term, S-2173, which is Senator Lipman's bill dealing with Termination of Parental Rights. It deals with these aspects, and others as well, of the Termination of Parental Rights proceedings.

We sincerely urge the Committee to consider this bill in the context of S-2173 as well, because we feel that in terms

of specific provisions of both of them, there is the makings of significant improvement in what I already characterized as a very muddy area of statutory and case law in New Jersey. And the written testimony speaks in more detail than that. I'm going to skip over that at this time and move on to the other bills, very briefly.

SENATOR AMBROSIO: Yes, I would ask you to be brief. We have several other witnesses.

MR. LOUIS: Yes, absolutely, I'm going to just take a couple more minutes of the Committee's time. S-2595 which deals with limits on repeated placements of children, we think is an excellent idea. Continuing placements because of uncertainty and parents who continually come forward and ask DYFS to help out for awhile, cause untold damage to the children: psychologically, physically, emotionally, and every way you can imagine, and basically, as child advocates, we are deeply concerned about that. We would commend to the Committee the need to recognize the possibility that some of these placements may be situations in which there is absolutely no fault on the part of the parent, where truly emergent circumstances might arise, that would require or lead the parent to seek placement by DYFS for a specific time-limited period and for a specific reason. And again, as with all other automatic, mandatory provisions of the law, we would urge the Committee to be cautious in terms of allowing for the possibility of a legitimate reason to vary from the procedure.

Finally, S-2577 which provides for legal representation of children and indigent parents in Termination of Parental Rights proceedings: Needless to say, this bill is very significant to us since it will place a responsibility on our agency. Our Law Guardian Program currently provides representation for all children in child abuse and neglect cases in the Family Court, and there is a certain wisdom and logic to adding that responsibility to our caseload. We

currently do not have the jurisdiction to do that. Obviously, we would be foolish and remiss were we not to point out to the Committee that requiring our agency to take on this caseload -- which is a significant number and, moreover, significantly detailed proceedings-- We would urge the Committee to seek appropriation for it, because there is just absolutely no way consistent with our legal requirements not to overspend our budget for us to do this representation which is vitally important, and we think that from the standpoint of the children, continuity of representation would be vital. And if the Committee asked us to do so, we would certainly want to make that representation. I will let the written testimony speak for the rest of our concerns on it. Again, we commend the Committee for the importance of presenting these issues at this time.

SENATOR AMBROSIO: Thank you, Mr. Louis.

MR. LOUIS: All right, thank you.

SENATOR AMBROSIO: Next we have Ceil Zalkind from the Association for Children of New Jersey.

C E C I L I A Z A L K I N D: Thank you, Senator Ambrosio, and other members of the Committee. I'm here to really express our very strong support for all three bills. In fact, I think that these are the most important bills that this Committee has considered.

SENATOR GORMLEY: The three bills on the list?

MS. ZALKIND: Yes, the three bills under discussion. I'll be very brief. Our written testimony spells out some of the background for our support, as well as some very specific recommendations that we have to amend S-2580.

But I'll begin with S-2577. As Jim Louis said, this is probably the most important area of family law. It involves the termination of the parent/child relationship. Many people talk about this area of the law as being the death penalty of family law. And in fact, this is an area where there is no

mandated legal representation of parents or children. Attorneys are appointed for parents and guardians ad litem are appointed for children based on a rotating list that the Family Court uses of pro bono attorneys. And despite very well-intentioned attorneys, and some successful training projects such as one that we've done with the Young Lawyers' Division of the New Jersey State Bar Association, it does not prepare attorneys satisfactorily to represent parents and children in these cases. We strongly support any effort that would contract with Legal Services to provide trained attorneys for parents in these cases and certainly to expand the Law Guardian Program. Children who have a law guardian because of a child abuse and neglect case that moves on to termination cannot even maintain that relationship in the most serious part of their case before the Family Court. But, I would echo what Jim Louis said: This bill needs some appropriation. We're very concerned that neither the Public Advocate's Office nor Legal Services would be able to provide this kind of legal assistance without some funding. It just isn't possible. I think last year the Division of Youth and Family Services brought between 250 and 300 Termination of Parental Rights cases into court. It costs money to have law guardians and attorneys represent these clients.

SENATOR AMBROSIO: Do you know how much, Ceil?

MS. ZALKIND: Well, I know that this bill is a companion to Assemblyman Charles' bill in the last session, and I know that both the Public Advocate's Office and Legal Services made some recommended appropriation. I believe the total appropriation in that bill was, I think, \$1.7 million. It did not have any further discussion, unfortunately, after the appropriation was added to it.

S-2580, the Termination of Parental Rights Law, we strongly support. We have felt for a long time that the termination statute needs to be amended to provide some

consistent guidelines to determine which children and parents are subject to these kinds of court actions. We do, however, feel that this bill needs some amendments. We support the intent of it and most of the provisions, but feel that there are two sections that need some amendments. First is the section that Jim Louis referred to around the search procedures. We agree and disagree.

SENATOR AMBROSIO: You want it to be immediately?

MS. ZALKIND: We want it to be immediate.

SENATOR AMBROSIO: What does "immediate" mean?

MS. ZALKIND: Immediate, to me, would mean within the first 30 days that the case comes to the Division.

SENATOR AMBROSIO: Well, why don't we say that then?

MS. ZALKIND: Okay. I think that that's appropriate. It fits in with the Child Placement Review Guidelines. The Division has to have the case plan to the child placement review system within 30 days. I think it's very important for cases even where the Division is not going to place the child. It's very important to locate relative resources. Very often the relative can be a resource to prevent the placement. Too often what happens is that DYFS concentrates on the parent who brought the child to the agency, the mother for example, and only when no plan with the mother has materialized -- which can sometimes be years later -- does the Division say, "Hey, this kid has a father. Let's see if there's a father who's interested, or some relatives." I think the search right up-front is very important, whether or not the child comes into placement.

The second area where we have recommendations -- and they're written out in our testimony -- is the language in lines 31 to 42 which begins on page two, which changed the grounds for termination under this section of Title 30. It amends the current language in the bill, amends ground "d" and adds a ground "e." We find some of this language very

confusing, and also some of it is impossible, because it requires the parent to accomplish tasks which really are directed to their care of their child in their own home; not to the care of a child in foster care. Since all termination cases under this section involve children and not of home placement, this is somewhat confusing. We believe that the intent of the bill was to shift the focus in the current statute -- which asks parents to plan for the future of the child -- from planning to remedying the problems that led to the placement. We would recommend changing the amended language in "d" and "e" to say something along the lines of -- requiring the parents, "to remedy the circumstances and conditions that resulted in the child's out-of-home placement, although physically and financially able to do so," which is in the current statute, and adding that, "Diligent efforts by the Division shall include all services necessary to reunite the family, including parent/child visitation. Sporadic visitation by the parent shall not be a bar to proceeding under this section."

SENATOR DiFRANCESCO: Well, Ceil, isn't that what's in Wynona's bill?

MS. ZALKIND: Not really, I don't think.

SENATOR DiFRANCESCO: No? Because I know we struggled with this, you know, as a Commission. You know it because we spoke through the staff to you about it quite often. Of course, it's a struggle to amend the statute in a way where everybody is going to be happy.

MS. ZALKIND: We will agree with that, absolutely.

SENATOR DiFRANCESCO: I think Wynona's bill is somewhat a result of that long struggle. Did you have an opportunity to read the Public Advocate's statement?

MS. ZALKIND: Yes, I read-- I have not read the full statement, no, but we have had some discussions about it. I reviewed Senator Lipman's bill. I think some of the provisions

of the bill are very strong, especially the ones that define diligent efforts. My concern is that it is not child-focused enough; that it still gives the parent a great deal of time. And when you're talking about cases of parents who are incarcerated, and parents who have a condition--

SENATOR DiFRANCESCO: I know a lot of our focus was on the incarcerated.

MS. ZALKIND: Right. I think at some point you have to balance the time that the parent is not going to be able to take care of the child, to what the implications are for the long-term future of the child. I think our objection -- and it's not a strong objection -- but our concern about that bill, is that it doesn't talk about time limits in the child's best interest. Perhaps some combination of the two bills would be appropriate.

The other sections of the bill-- I'm sorry I interrupted you.

SENATOR DiFRANCESCO: No, I'm finished.

MS. ZALKIND: Section 17 on page 3, we feel, clarifies the current search and notice procedures which are required of DYFS in court rule. I think it's important to have this in the statute because various courts handle this very differently. And also, requiring that the final guardianship hearing be held within three months of filing, makes these cases a priority of the court. We've seen through our ABA project that some judges delay guardianship cases for months, sometimes years, struggling to decide the case.

The last bill, S-2595, we feel very strongly about. Our "Splintered Lives" project indicated that 40% of the children in our study had been in foster care not once, but many times before. These children had been subjected to constant rejection and separation from everything they had known and loved, not once but many times.

We're very concerned that this problem comes about because of two factors: One is the dependence of some parents on the foster care system to resolve family problems. The family has a problem; the child goes into placement. And two, what we see is the failure of DYFS to look behind the immediate family crisis and into long-term planning for the child. What we saw in our cases is that even when the family has a long history with DYFS, the agency's inclination is only to consider the current problem and not what that means in the long-term history of the child.

We feel this bill has some very important provisions:

1) Requiring DYFS to include prior placement history as part of the case plan. The referral to the Child Placement Review Board is very important. A case plan in terms of a child who's been in placement before should include that past history, and should put some specific time limits on a parent to accomplish the case goal to reunite the family.

2) Requiring DYFS to place the child in the prior foster home is very important. We've heard from many foster parents that they never know when a child comes back into placement. Sometimes the Division has the perspective that the family will get too attached to the child, and some foster parents have told us if they've advocated for a child they get informally "blacklisted" by the Division, and they're not told when a child comes back into placement. Requiring DYFS to at least explore that prior foster home as a possibility, I think, is an excellent idea.

3) Requiring the case to be identified as a "adoption potential" and exploring some of the things that the Division must do should the case move on to adoption is important. We agree that this should not mean that every case that comes into placement should be an adoption case, but at least start the ball rolling to get some of the things in the works so that if the child does not go home, and reunification does not occur,

the child does not linger in placement while the Division shifts gears to a new goal.

And lastly, the most important provision is the section that prohibits DYFS from placing a child in foster care a second time on the basis of a voluntary placement agreement. We've testified before this Committee before that we feel the whole voluntary placement system needs to be reviewed in our State. New Jersey has a strong reliance on voluntary placements. Eighty percent of the children in out-of-home placement are on an agreement with the parent. We don't feel that this adequately protects parents or children and that it often interferes with long-range planning for the child. Requiring the Division to get a court order to place a child the second time is very controversial, and I think the Division would come in and say it would be very expensive. We feel that's a real important point to start a discussion about: What's in the best interest of children who face repeated placement?

Again, I'd just like to commend all of you for these bills. I think they are excellent and we strongly support them. We would also be glad to work on any amendments should the Committee be interested in amendments in the future.

SENATOR AMBROSIO: Thank you very much, Ceil.

SENATOR GORMLEY: One question: New Jersey relies far too heavily on voluntary placement agreements. On its face, why is it wrong to rely on voluntary placement agreements?

MS. ZALKIND: Well, for a number of reasons. What we've heard from many families -- and, in fact, some DYFS caseworkers -- is that very often the voluntary placement agreement is negotiated with the caseworker saying to the family, "Sign this or we'll take you to court."

SENATOR AMBROSIO: It's not really voluntary?

MS. ZALKIND: Right. It's not really voluntary.

SENATOR GORMLEY: Oh, so it's not-- All right, now I understand that it's not voluntary. Sounds good.

MS. ZALKIND: No one tells the parent, "Your legal rights are this. You don't have to consent to this." Also there's no court review then. With a court ordered placement, a judge, at least, must review why the child is coming into placement and what the case plan is.

SENATOR GORMLEY: Because on its face--

SENATOR AMBROSIO: But is that a reason to prohibit it?

MS. ZALKIND: No, I don't think it should be totally prohibited. I think it probably should be defined in terms of what truly voluntary placements are.

SENATOR GORMLEY: Yeah, that's the whole point. I mean, when I read "prohibit voluntary," I'm going-- Well, God, that seems somewhat illogical. But, you're not talking voluntary. What you're talking is the situation where somebody doesn't have counsel. It's one on one; it's, "Now these are the rules or you're in trouble." And that comes back to either a counsel or an independent third party, not a part of the Department being there. Okay.

MS. ZALKIND: This would require-- This would prohibit voluntaries, if the child comes back into placement a second time.

SENATOR DiFRANCESCO: Repeatedly?

MS. ZALKIND: Right, repeatedly.

SENATOR DiFRANCESCO: It doesn't prohibit voluntary. The deal doesn't prohibit voluntary. It only prohibits it in a repeated case?

MS. ZALKIND: It does not prohibit the use of voluntaries in general, no. And I think there's a lot of room for discussion about whether you want to completely prohibit voluntaries in that situation, too.

SENATOR DiFRANCESCO: The Public Advocate says no; says, "Be careful."

MR. LOUIS: I didn't say that, Senator.

SENATOR DiFRANCESCO: It says, "Be careful." He's fairly red on that last one. No, you didn't say, "No." I didn't mean to emphasize it that way.

SENATOR COSTA: Senator Lipman?

SENATOR LIPMAN: May I ask-- Do you know the appropriation amount accompanying the Assembly bill by representation?

MS. ZALKIND: I believe that in the last session that appropriation was \$1.7 million, but I'm not certain.

SENATOR LIPMAN: All right. Thanks.

MS. ZALKIND: Don't quote me, in other words. Thank you very much.

SENATOR COSTA: Thank you so much, Ceil.

I would like to call on James Smith, please, from the Department of Human Services.

J A M E S S M I T H: Thank you, Senator, and we'll keep it brief. We would agree with the statement that Jim Louis mentioned that there needs to be a review of page 1, lines 28 through 34, in terms of the one-year as well as the other items that are mentioned there. We agree that we need to look at that. We'd be very willing to sit down with your staff, the Public Advocate, and also the Association to look at that particular section. A point that Ms. Zalkind made on page 2 concerning termination of parental rights to include the failure of parents, of child placement, to provide him with adequate food, shelter and education-- We feel this is more appropriate dealing with in-home types of placement; that is probably not the best wording for this particular section right now.

And, on page 3, lines 2 through 4 talk about the three-month period for filing a petition. We would just like to raise the concern that that may cause a backup in terms of getting people through-- By shortening the span of time, it

may back up cases. So, in the long run, it may actually be longer in times of -- in the court system and less.

On the bill S-2595, sections 3a. through c. on page 2, which talk of summarizing the child's prior history, the reason for repeated days, and a report of summarizing child's history being provided, we'd like the Committee to be able to take a look at what is now actually provided as part of the child placement review process. Those particular documents may be more comprehensive than what you have in the legislation here. So, we're just asking you to take a look at them.

SENATOR GORMLEY: Could you -- because we're not going to do this today -- could you put this in writing?

SENATOR COSTA: Yeah, we'd appreciate that.

SENATOR GORMLEY: I would appreciate it, because you live with this on a day-to-day basis. Excuse me, I'm a little new here, and I would like your specific comments. That way I can take the bills and put them in front of me, get all three sets of statements, and see where everybody disagrees.

MR. SMITH: And, our last piece is on section 5 on page 3, and the voluntary agreement section. We question what appears to be the denial of parents to use voluntary agreements because they're used, and at times they are appropriate. We feel we know there are concerns -- ACNJ, and also other advocates and community groups -- about the voluntary placement. We heard some concerns here last year or so, in terms of public hearings. If we need to review that process, then let us review the process. But in terms of just saying there should not be a voluntary placement, we think that would be detrimental to families and children in terms of a balance between rights of families, parents as well as the children. So, we'd like to take a new look at section 5, page 3. Thank you.

SENATOR COSTA: Thank you very much. We will now have Julie Turner.

J U L I E T U R N E R: I'm Julie Turner, Association of Children's Residential Facilities. I will be brief. I will prepare this in writing, but I just couldn't quite get it all done yesterday. Now I have to get it to be copied. Not only am I with the Association of Children's Residential Facilities, but I also served on the Child Placement Review Board for nine years, on the ACNJ Termination of Parental Rights Task Force, and five trillion years ago, I was a DYFS caseworker. So, it's a kind of varied background.

Before I start particularly on these three bills, I want to just make one comment: At the Joint Appropriations Committee hearing, Senator Costa raised a question about the lack of money for subsidized adoptions. There would not be enough to even continue the current-- Treasurer Berman said it's a tight budget. I came back; I was so incensed. This State cannot be this fiscally or morally bankrupt that we cannot provide homes for children. I urge whatever the Committee can do on that-- Now I made my emotional plea on that.

We support the beginning of looking at a better Termination of Parental Rights bill. I agree that looking at the combination of the two may be in the best interest. It's worth noting that in a survey done of children in the residential facilities, of the total group, 11% had parental rights terminated, and another 10% had essentially no parents, by which we meant there were parents, whereabouts unknown, or parents dead. There is a whole group of kids that have been lost and I'm not sure why, but I think we've got to think about those and move the termination further, more quickly. As we get to the older group in residential, very few have adoption as a goal even though about one-fifth of them have inherently no parents.

Secondly, the issue of repeated placements I strongly endorse. What we have seen with kids coming into residential

care, is that over a third of them -- this is their fifth placement or more. These are kids who have bounced a lot. We have children who have been placed as many as 19 and 20 times.

SENATOR COSTA: And each time they treat them as the first time, is that it?

MS. TURNER: The history is very bizarre. I mean, there isn't the kind of information that should be looked at.

SENATOR COSTA: And you feel this addresses it?

MS. TURNER: Yes, I strongly support this.

The issue of voluntary/involuntary which Senator Gormley raised-- Let me give you two particular facts, one from my early days as a DYFS caseworker. Now, there are a lot of pressures on your time, and frankly it's a lot easier to say, "Look, I want to be your friend and be helpful, and if you won't go along with this I am going to court." So, it's not too long. You know, often it's not too voluntary. And I understand it, but it really doesn't protect other rights.

SENATOR GORMLEY: Therefore you agree there should be a change?

MS. TURNER: I absolutely think there should be a real looking at the voluntary and involuntary placements for that reason. And secondly--

SENATOR GORMLEY: But, can we get back to the other point that once you change it-- Let's call it an expediting mechanism for people who have too much work to do, too much of a caseload. Doesn't this then come down to-- How much money then? I don't think people of choice would like to twist someone's arm, but if you have so many files, you would like to be more deliberate-- I mean, I hate to keep coming back to money, but this would -- in your opinion as having been a former caseworker -- obviously would cause a more deliberate approach, therefore causing the need for more caseworkers?

MS. TURNER: Maybe and maybe not. I think when you're talking about removing kids from a family, you're talking about

cost. You're talking about time, and it's a question of where that time is going to be spent. You know, if you'd ever lived with seeing a child come out of a home, you know, the child right in front of you, you're really doing something that is fairly earth-shattering, and I think the protection has got to be in place. Now I'm going to go to the other side of it; both again, from child placement review and looking at the figures here. Of the kids in residential, about 85% are voluntary placements. However, a third of those kids were sexually abused, and about 45% were physically abused. I question-- I saw this during child placement days where there had been some really terrible sexual abuse, and there weren't even the court protections. They were permitted to sign a voluntary. And that's where I think we have to look at the whole voluntary/involuntary system.

SENATOR COSTA: Could you just go into that a little more?

MS. TURNER: Okay. We have had-- Again I've seen it both from the residential, but again from child placement review days-- A child had been sexually abused.

SENATOR COSTA: In the home that the child--

MS. TURNER: In the home by the -- normally, the father.

SENATOR COSTA: The foster parent or the natural father?

MS. TURNER: Right, or the boyfriend. It, in a way, didn't matter. Again it expedited a court thing. But, the parents were told, "Yeah, we're here to help," and a voluntary placement was signed. There was not the protection, I don't think, that the child needed, which would have been an involuntary placement; to say that this child is under the--

SENATOR GORMLEY: In other words, the record-- In other words, it was expedited, but it would have been better to spend a little more time and have the record very clear that

no, this was involuntary. We wouldn't let the child stay here anyway, so why even-- In other words, why label it voluntary when, in fact, you want the record to reflect the person's prior problems?

MS. TURNER: Absolutely. Yeah, and also protect, so that down the road if a parent says, "I'm going to pull the child--"

SENATOR GORMLEY: Sure. Well, let me ask you a silly question.

MS. TURNER: I haven't heard you ask a silly question yet.

SENATOR GORMLEY: Okay. Well, it would seem to me that even if it were voluntary, wouldn't there be a file reflecting the problem that caused somebody to say, "Sign this voluntary?" I mean wouldn't it be in the record anyway?

MS. TURNER: Yeah, we hope so. Okay, let me ask--

SENATOR GORMLEY: It would be in the record. I mean, it would seem to me--

SENATOR DiFRANCESCO: Why couldn't it be a voluntary placement? I mean, it depends on the circumstances.

SENATOR COSTA: Wouldn't it be, Senator, that they're mostly alleged and it reflects that; not substantiated?

MS. TURNER: Okay. If you get a year later, or a year-and-a-half later-- Some of the information may not be as available then and as well documented. Certainly, what our review board did because there was the red flag-- I don't know if that makes sense or not. It sort of made voluntary a little bit more involuntary, which said the child couldn't go home prior to court review.

SENATOR GORMLEY: Fine.

MS. TURNER: Yeah, but I think that is not uniformly done and I think the child isn't as well protected.

SENATOR GORMLEY: Are you saying that there's an interim period in voluntary placement where the child would be

susceptible to further abuse?

MS. TURNER: Where the child could be removed from the home quickly? Potentially, yes.

SENATOR GORMLEY: No, no, that's not the question. I mean the inference that I gained from what you said was that when you have the voluntary placement situation there's a gap there. Maybe a day, or two days, or three days prior to placement where that--

MS. TURNER: No.

SENATOR GORMLEY: Okay, then I'm wrong.

MR. SMITH: (from the audience) If the child is in immediate danger we can move for what we call-- We can go to court, and we have to be in court within 24 hours to say why we removed. So, our caseworkers would look at a case and say the child's in immediate danger. We would move for the removal.

MS. TURNER: But you would also, I think, attempt to get a voluntary even when the child was at risk, would you not, Jim?

MR. SMITH: There are times, in terms of a voluntary, where as you mentioned, files and records -- where it may be over a period of a week. It may be over a period of several weeks and months where a caseworker may say, "This is what I have in front of me. You really don't-- You really can't have the child. There are several options left to me: One, we don't feel that you should have the child. There are several options left to me. I could go to court and have the child removed, or you can sign the child over to me."

SENATOR DiFRANCESCO: There's nothing wrong with that.

SENATOR GORMLEY: And the record would appear to be covered.

MS. TURNER: Frankly, I think it depends on the severity.

SENATOR DiFRANCESCO: Well, I mean we're talking about semantics--

SENATOR GORMLEY: And the record reflects the reason they sign the voluntary--

MS. ZALKIND: I think you're absolutely right. The record says this child came into placement because of abuse, because of a risk. But, the record then stays within DYFS. It doesn't go to court. There's no court review except--

SENATOR GORMLEY: All right, then do we need a bill that the record goes to DYFS?

SENATOR DiFRANCESCO: You mean if it stays with DYFS?

SENATOR GORMLEY: No, what I'm saying is that the record goes from DYFS to the court. (several people speaking at once; indiscernible to transcriber)

SENATOR COSTA: Let's have one at a time, so we can get it for the record, please? Does it go to child placement, then?

MS. TURNER: Okay. I've been off child placement for three years. The quality of information that child placement review boards got back then varied considerably, so you might or might not have all of the details. Things may have changed--

SENATOR LIPMAN: So what you're saying is the information regarding the abuse of a child can be lost.

MR. SMITH: When a child is placed by the Division, child placement review then kicks in. Child placement review reviews, in a sense, why a child is in placement. Items in the file are reviewed by that team of reviewers that Julie was once a member of. So, that information is not lost.

SENATOR COSTA: Senator Gormley?

SENATOR GORMLEY: All right. Why don't we just make a part of the voluntary process that while that person is voluntarily "giving up the child," as a part of that there must be a waiver that those records are provided to the court, period? Or, it can't be voluntary. And those who would be doing it without having committed child abuse, or whatever,

would have no problem with that being available to the court, as I've said.

SENATOR COSTA: I don't know if you can do that. Anyone here have--

MS. TURNER: I think what Ceil was suggesting -- and I'm suggesting -- is that I think we should be taking a broader look at the voluntary and involuntary placements. New Jersey is very unique. We really are very unusual, where in most states, I think, the proportions are reversed.

SENATOR COSTA: Well my concern is just that the courts are so backed up that they may never get to effect the waiver. But, we'll look into it--

MS. ZALKIND: I'm sorry. I know this is irregular to interrupt.

SENATOR COSTA: That's quite all right. We want all the information we can get.

MS. ZALKIND: I always like to make a comment because I think this is a very valuable discussion on voluntary/involuntary placement. I think the case that Julie laid out is a significant one and, in fact, there are some cases like that in our project where you wonder why an involuntary agreement wasn't done to get more of a court order than agreement about what everybody's supposed to do to get the child home. You get a judge to supervise it, in addition to the child placement review board. I think, though, that to us that is not the most important issue around voluntary placements.

It's the other side of it that's the problem; the parent who comes to the Division for services. For example, a parent is homeless and comes to the Division for services. DYFS says, "The service we can offer you is placement of your child," and takes the child into placement. For the parent there is nothing-- Voluntary placement then does not create

the kind of dialogue that has to exist between the parent and the agency.

SENATOR GORMLEY: But that's not DYFS' fault. Let's get back to society's fault, because we don't have the housing and-- Believe me, I'd love to be able to sit in an office and say, "Here's the home you'll be able to use for the next six months." No, and I think the DYFS case-- "Here for six months, and by the way, the food will be over this afternoon." (laughter) I mean I'd love to be able to do that, and I'm not trying to simplistically go back to money. I can't believe anybody wouldn't like to be there to appear to be Santa Claus instead of saying, "You have to leave your child." You know, we have to balance this. I mean, unfortunately, the Department is going to be wrong no matter what they do. That's why you create departments, so legislators can bash departments.

MS. ZALKIND: And advocates.

SENATOR GORMLEY: And advocates. That's right. He's taking it well today. (laughter) I see your point, but that-- If I were to vote for something on that basis, putting that restraint-- Unless I provided them the money and resources and the people so they had that alternative, I'd be a phony. I mean you just can't say, "Hey you'll do this." That's what we do to DEP, and then we bash DEP. Same thing.

MS. ZALKIND: As with Senator DiFrancesco's bill on respite care, I think you have to look at the cost of foster care, and in some cases it's not additional money, but--

SENATOR GORMLEY: No. You have to understand I am going to end this hearing asking for DYFS to provide all the money on the out-of-state placements. It's going to be the first thing I'd like to ask through the Chairman on out-of-state placement of children, because I think there are in-state alternatives that are cheaper. Fine.

MS. TURNER: I can answer that one.

SENATOR GORMLEY: Well, don't, please. The point is, I don't want-- Philosophically, I don't want to say I'm for something that's easy to say and DYFS goes, "Well, we could work from 12 to 8 in the morning and do this." I mean, if there isn't the money to do it, they can't offer alternatives. I don't mean to answer for DYFS, but that would seem to be the problem. I think they'd love to say here's your homeless shelter. They aren't there. One of the things that's come up for us is that we have-- We're now working on a program in Atlantic County because what we have is the problem of placing in Section 8 housing homeless people, which is a real problem. We have two different regs and we wind up putting them in motels at \$1500 a week, instead of in available Section 8 housing, which is something you have to work-- Two departments don't talk to each other, and here are the rules, and here are the regs. So those are the things you have to look-- I'm sorry, Chairman. I apologize.

SENATOR COSTA: That's all right. It's a very interesting point you bring out. This is something that I think we've stated over and over in this Committee; that we want the different divisions to talk to each other because the main goal is that the child is protected, and if they don't talk to each other we can't get them adopted, and we can't get them the help they need. And, if a report comes in and the right people don't see what's happening, how can they come to the right decision? So, we appreciate all your input, and if you have anything more to say, Julie--

MS. TURNER: As I said, I don't have the specifics on what I'd like on the voluntary/involuntary, but I think it should be looked at by probably--

SENATOR COSTA: We'd appreciate your input. That's why we're not voting out these bills. We're having hearings because we want to make them better, and we want to make sure they get through.

MS. TURNER: And the last thing: I will be providing you a copy of an article that just appeared in an annual report about a youngster who went from residential to a specialized treatment foster home and is now being adopted after many placements. It's because you often hear the bad news things. (next sentence indiscernible)

SENATOR COSTA: Thank you. Thank you very much.

I'd like to say one thing more. Senator Lipman does have a bill, let's see, this one? S-2173 which is the same as the one I have here, S-2577, and I'm sorry we didn't-- It's in Institutions, Health and Welfare so we'd like to kind of get them together. I wish they would send them to the same Committee so we could put them together. We're going to ask that S-2173 come here to this Committee so we can consider them both at the same time. I apologize, Senator Lipman. And thank you once again. Your input is so valuable to us and with your help we can get some of these bills through, so we can help more children in the State. Thank you once again.

I believe I called on everyone. Is there anyone else who wishes to speak? (no response) If not, the hearing is adjourned.

(HEARING CONCLUDED)

APPENDIX





Members of the Commission:

SENATOR DONALD T. DIFRANCESCO
CHAIR
SENATOR WYNONA M. LIPMAN
VICE CHAIR
JANICE NEWMAN, ESQ.
ACTING DIRECTOR,
DIVISION ON WOMEN
GLORIA BONILLA-SANTIAGO, PH.D.
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COMMISSION ON SEX DISCRIMINATION IN THE STATUTES

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APRIL 1990

POSITION PAPER ON SENATE BILL 2577
SPONSORED BY SENATOR CATHERINE COSTA

The Commission on Sex Discrimination in the Statutes supports this bill, which would clarify the rights of parents to state paid counsel in parental rights termination or institutional guardianship proceedings. The bill would bring the law into compliance with the common understanding communicated to parents by the state (see "Substitute Care For Your Child, Parents' Handbook" DYFS publication 18-33, rev'd 8/85, p.4. "The parent has a right to have a lawyer in court. If needed, DYFS can help the parent to find a lawyer. The court may appoint a lawyer if the parent cannot afford one.") and would comport with the seriousness of such proceedings.

The Commission's interest stems from the historical view that litigation to take away the rights or property of women is secondary to that litigation which threatens the money or freedom of men. Generally, women come forward more often than men to contest terminations and guardianships, and single mothers constitute a large proportion of the indigent. Therefore, this bill would provide attorneys primarily for women who cannot afford them.

The Commission on Sex Discrimination in the Statutes supports the general view that family matters are no less matters of consequence than money or personal freedom matters, and supports this specific measure which promotes that view. The Commission is concerned that the appropriation included the Assembly version of the bill is omitted here. If the Public Advocate cannot reasonably absorb the cost (estimated at \$1,000,000) the purpose of the bill will be frustrated, and its passage will be a mere gesture.

IX

STATEMENT OF THE
DEPARTMENT OF THE PUBLIC ADVOCATE
BEFORE THE SENATE COMMITTEE ON CHILDREN'S SERVICES
ON
SENATE BILL 2577, 2580, AND S-2595

APRIL 30, 1990

GOOD MORNING CHAIRWOMAN COSTA AND MEMBERS OF THE SENATE COMMITTEE ON CHILDREN'S SERVICES. THE PUBLIC ADVOCATE APPRECIATES THE OPPORTUNITY TO PARTICIPATE IN THIS CRITICAL RE-EXAMINATION OF THE STATE CHILD WELFARE LAWS AND TO COMMENT ON S-2580, S-2595 AND S-2577. WE STRONGLY SUPPORT THE NEED, IDENTIFIED IN BOTH S-2580 AND S-2595, TO AMEND EXISTING PROVISIONS OF TITLE 30 IN ORDER TO FACILITATE PERMANENCY PLANNING FOR CHILDREN WHO MIGHT OTHERWISE LANGUISH IN FOSTER CARE. THE PUBLIC ADVOCATE ALSO REAFFIRMS HIS SUPPORT FOR S-2577 AND THE PROVISION OF COUNSEL TO PARENTS AND CHILDREN IN TERMINATION PROCEEDINGS THAT SEEK TO SEVER THE MOST FUNDAMENTAL OF RELATIONSHIPS BETWEEN A PARENT AND CHILD.

THE DEPARTMENT OF THE PUBLIC ADVOCATE THROUGH THE OFFICE OF THE PUBLIC DEFENDER CURRENTLY REPRESENTS ALL CHILDREN WHO COME INTO FOSTER CARE AS THE RESULT OF ABUSE AND NEGLECT PROCEEDINGS UNDER TITLE 9. THROUGH THIS REPRESENTATION, THE PUBLIC ADVOCATE HAS BECOME UNIQUELY FAMILIAR WITH THE PLIGHT OF CHILDREN WHO REMAIN IN THE LIMBO OF FOSTER CARE FOR EXTENDED PERIODS OF TIME. IN ADDITION, THE DEPARTMENT OF THE PUBLIC ADVOCATE HAS GAINED INSIGHT INTO THE DIVISION OF YOUTH AND FAMILY SERVICES' (DYFS) DECISION-MAKING PROCESSES THROUGH ITS ONGOING PARTICIPATION IN THE EFFORT TO PROMULGATE DYFS ADMINISTRATIVE POLICIES AND PRACTICES INTO REGULATIONS. IT IS THE EXPERTISE GAINED FROM THESE AND OTHER ENDEAVORS ON BEHALF OF CHILDREN THAT INFORM OUR COMMENTS TODAY.

IN THE COMMENTS WHICH FOLLOW WE ENCOURAGE THE COMMITTEE TO PRESS FORWARD WITH THESE INITIATIVES WHILE OFFERING SUGGESTED AMENDMENTS THAT WILL BRING S-2580 AND S-2595 INTO CONFORMANCE WITH OUR STATE'S PUBLIC POLICY OF PRESERVING AND STRENGTHENING FAMILY LIFE. WE WILL ADDRESS EACH OF THE BILLS, S-2580, S-2595 AND S-2577, IN TURN.

S-2580: AMENDING THE TERMINATION OF PARENTAL RIGHTS LAW

IT HAS LONG BEEN RECOGNIZED AS A BASIC TENET OF LAW THAT THE SANCTITY OF THE RELATIONSHIP BETWEEN A PARENT AND CHILD DESERVES MAXIMUM PROTECTION AGAINST WRONGFUL DISRUPTION BY THE STATE. SEE PRINCE V. MASSACHUSETTS, 321 U.S. 158 (1943); PIERCE V. SOCIETY OF SISTERS, 268 U.S. 510 (1925); MEYER V. NEBRASKA, 262 U.S. 390 (1922). COURTS HAVE FREQUENTLY RECOGNIZED THAT THE RIGHT TO CONCEIVE AND RAISE ONE'S CHILDREN IS "ESSENTIAL" AND A "BASIC CIVIL RIGHT". STANLEY V. ILLINOIS, 405 U.S. 645, 651 (1972). IT IS FOR THIS REASON THAT THE NEW JERSEY APPELLATE DIVISION IN IN RE COPE NOTED THAT N.J.S.A. 30:4C-15, THE PROVISION OF OUR STATE LAW PERMITTING TERMINATION OF PARENTAL RIGHTS, "IS TO BE INTERPRETED STRICTLY" AND IN ACCORDANCE WITH THE PRINCIPLE THAT "THE PRESERVATION AND STRENGTHENING OF FAMILY LIFE IS A MATTER OF PUBLIC CONCERN AS BEING IN THE INTERESTS OF THE GENERAL WELFARE. 206 N.J. SUPER. 336, 340 (APP. DIV. 1977; see also IN RE GUARDIANSHIP OF J.P.M., 210 N.J. SUPER. 512, 519 (APP. DIV. 1985)).

IN ORDER TO ENSURE THAT THE PROVISIONS OF TITLE 30 GOVERNING REMOVAL OF CHILDREN FROM THEIR PARENTS AND PERMITTING TERMINATION OF PARENTAL RIGHTS ARE IMPLEMENTED IN A MANNER WHICH OFFERS MAXIMUM PROTECTION AGAINST THE UNNECESSARY DISRUPTION OF FAMILY LIFE, THESE STATUTES MUST BE REWRITTEN TO CLARIFY THE OBLIGATIONS IMPOSED UPON A PARENT SEEKING TO REGAIN CUSTODY AND TO MORE PRECISELY DEFINE DYFS' RESPONSIBILITY TO MAKE "DILIGENT EFFORTS" TO ACHIEVE REUNIFICATION BEFORE SEVERING THE PARENT-CHILD RELATIONSHIP. S-2580 MAKES VALIANT FIRST STEPS IN THIS DIRECTION. THE PUBLIC ADVOCATE PROPOSES THE FOLLOWING AMENDMENTS, HOWEVER, TO FACILITATE ACHIEVEMENT OF THIS GOAL AND TO MORE CLEARLY BRING S-2580 INTO COMPLIANCE WITH PRINCIPLES ENUNCIATED IN IN RE COPE.

FIRST, AS DRAFTED, THE LANGUAGE AMENDING SECTION 11 OF P.L. 1951, C. 138, REQUIRES DYFS, UPON RECEIPT OF AN APPLICATION TO ACCEPT CARE OR CUSTODY, TO UNDERTAKE A SEARCH OF UP TO ONE YEAR FOR THE NATURAL MOTHER OR FATHER OR OTHER LEGALLY RESPONSIBLE PERSON WHO MAY BE WILLING AND ABLE TO PROVIDE FOR THE CARE AND SUPPORT REQUIRED BY THE CHILD. SUCH A PROTRACTED SEARCH OBLIGATION DOES NOT SERVE THE CHILD'S INTEREST AT THIS JUNCTURE.

GENERALLY, AT THE TIME DYFS RECEIVES THE INITIAL APPLICATION, THE CHILD IS USUALLY IN THE CARE AND CUSTODY OF THE NATURAL PARENT OR GUARDIAN SINCE NO OUT-OF-HOME PLACEMENT HAS YET OCCURRED. MOREOVER, SINCE THE ISSUE AT THIS TIME IS FINDING

APPROPRIATE SERVICES TO MEET THE CHILD'S NEEDS WHICH, IN SOME INSTANCES MAY REQUIRE IMMEDIATE PLACEMENT FOR THE CHILD IN THE EVENT THAT DYFS' INVESTIGATION IDENTIFIES A NEED TO ACCEPT TEMPORARY CUSTODY, IT WOULD OBVIOUSLY BE INAPPROPRIATE TO ALLOW UP TO ONE YEAR'S TIME TO COMPLETE THE SEARCH. THE SEARCH REQUIRED PRIOR TO DYFS' INITIAL ACCEPTANCE OF CUSTODY MUST BE A THOROUGH BUT SPEEDY SEARCH TO FIND LEGALLY RESPONSIBLE PERSONS OR, IN FACT, ANY RELATIVE--EVEN RELATIVES WHO BEAR NO LEGAL RESPONSIBILITY SUCH AS THE PARENTS OF A PUTATIVE FATHER WHOSE PATERNITY HAS NOT BEEN FORMALLY ESTABLISHED--WHO IS FAMILIAR TO THE CHILD AND WHO IS CAPABLE AND WILLING TO CARE FOR THE CHILD. THE PUBLIC ADVOCATE STRONGLY SUPPORTS THE NEED TO SEARCH AGGRESSIVELY FOR RELATIVES WILLING AND ABLE TO ACT AS FOSTER PARENTS SINCE PLACEMENT OF A CHILD WITH HIS OR HER EXTENDED FAMILIAL NETWORK SERVES TO STRENGTHEN AND PRESERVE THE CHILD'S FAMILIAL IDENTIFICATION. FOR THESE REASONS, THE PUBLIC ADVOCATE RECOMMENDS THAT THE LANGUAGE OF SECTION 11 BE REDRAFTED TO REQUIRE AN IMMEDIATE SEARCH FOR ANY RELATIVE WITH WHOM THE CHILD MIGHT BE PLACED IF DYFS IDENTIFIES A NEED TO PLACE THE CHILD.

AN ADDITIONAL SEARCH PROVISION, HOWEVER, SHOULD ALSO THEN BE INSERTED INTO SECTION 15 OF P.L. 1951, C. 138 OR THEREAFTER TO ENSURE THAT DURING THE TIME A CHILD IS IN DYFS' CUSTODY, THE DIVISION MAKES EFFORTS ON AN ONGOING BASIS WITHIN THE FIRST YEAR TO IDENTIFY AND INVESTIGATE ANY RELATIVES WHO MIGHT BE APPROPRIATE GUARDIANS FOR THE CHILD IN THE EVENT THAT THE

PARENT'S RIGHTS ARE TERMINATED. MOREOVER, THIS TIME CAN BE APPROPRIATELY USED FOR SEARCHING FOR A PARENT WHO IS ABSENT FROM THE SCENE SINCE PARENTAL RIGHTS OF BOTH PARENTS MUST BE TERMINATED BEFORE THE CHILD COULD BE PLACE FOR EVENTUAL ADOPTION. THIS SEARCH, WHICH NOW OFTEN DELAYS THE CASE AN EXTENDED PERIOD OF TIME, WOULD BE MUCH MORE APPROPRIATELY SUBJECT TO A ONE-YEAR LIMIT, EXCEPT IN EXTREME CIRCUMSTANCES.

SECOND, N.J.A.C. 30:4C-15, AS WRITTEN, PERMITS TERMINATION OF PARENTAL RIGHTS WHERE A PARENT HAS FAILED SUBSTANTIALLY AND CONTINUOUSLY OR REPEATEDLY FOR A PERIOD OF MORE THAN ONE YEAR "TO PLAN FOR THE FUTURE OF THE CHILD". WITHOUT FURTHER EXPLANATION, IT IS DIFFICULT TO ASCERTAIN WHAT IS CONTEMPLATED AS APPROPRIATE PLANNING FOR A CHILD'S FUTURE. TO SUBJECT PARENTS TO THE RISK OF HAVING THEIR PARENTAL RIGHTS TERMINATED UPON SUCH AMBIGUOUS GROUNDS RUNS CONTRARY TO ALL NOTIONS OF DUE PROCESS AND FUNDAMENTAL FAIRNESS.

S-2580 ATTEMPTS TO CLARIFY THE PARENTAL OBLIGATION BY REDEFINING PLANNING FOR A CHILD'S FUTURE TO INCLUDE THE PROVISION OF ADEQUATE FOOD, CLOTHING, SHELTER AND EDUCATION TO THE CHILD AS WELL AS ANY OTHER NECESSARY CARE. THIS DEFINITION, HOWEVER, IS MISPLACED SINCE TERMINATION PROCEEDINGS UNDER THIS PROVISION ARE TRIGGERED ONLY WHEN THE CHILD IS NOT IN THE PARENT'S PHYSICAL CUSTODY BUT RATHER IS BEING CARED FOR IN AN OUT-OF-HOME PLACEMENT. AS THE CHILD IS NOT IN THE PARENT'S CUSTODY, THE

PARENT WOULD BE UNABLE TO DIRECTLY PROVIDE FOR THE CHILD'S FOOD, CLOTHING, AND OTHER DAILY NECESSITIES. FOR THIS REASON, IT WOULD BE INAPPROPRIATE TO PERMIT TERMINATION OF PARENTAL RIGHTS FOR FAILURE TO PROVIDE FOOD AND CLOTHING DURING THE CHILD'S PLACEMENT.

IN RECOMMENDING AN AMENDMENT TO PROPOSED LANGUAGE, THE PUBLIC ADVOCATE RESPECTFULLY DIRECTS THE COMMITTEE'S ATTENTION TO THE EXISTENCE OF S-2173, PRE-FILED FOR INTRODUCTION IN THE 1990 SESSION BY SENATOR LIPMAN, WHICH, LIKE S-2580, SEEKS TO REVISE THE LAW GOVERNING TERMINATION OF PARENTAL RIGHTS. S-2173 OFFERS AS A DEFINITION OF "PLANNING FOR THE FUTURE OF THE CHILD" THE OBLIGATION TO TAKE "REALISTIC AND FEASIBLE STEPS AS MAY BE NECESSARY TO PROVIDE AN ADEQUATE STABLE HOME AND PARENTAL CARE FOR THE CHILD WITHIN A PERIOD OF TIME WHICH IS REASONABLE UNDER THE FINANCIAL CIRCUMSTANCES AVAILABLE TO THE PARENT." S-2173 GOES ON TO PROVIDE THAT A GOOD FAITH EFFORT SHALL NOT, OF ITSELF, BE DETERMINATIVE OF WHETHER A PARENT HAS PLANNED FOR THE FUTURE OF THE CHILD AND FURTHER THAT THE COURT MAY CONSIDER THE FAILURE OF THE PARENT TO USE MEDICAL, PSYCHIATRIC, PSYCHOLOGICAL AND OTHER SOCIAL AND REHABILITATIVE SERVICES AND MATERIAL RESOURCES AVAILABLE. THE PUBLIC ADVOCATE RECOMMENDS THAT THIS COMMITTEE REVIEW THE LANGUAGE OF S-2173 IN REVISING S-2580 SO THAT THE FACTORS RELIED UPON TO DETERMINE WHETHER OR NOT A PARENT HAS PLANNED FOR THE FUTURE OF THE CHILD ARE FACTORS WITHIN THE PARENT'S CONTROL.

IN ADDITION, S-2173 RECOGNIZES THAT OFTEN A PARENT'S ABILITY TO MAINTAIN AND NURTURE THE RELATIONSHIP WITH A CHILD IN FOSTER CARE IS CONTINGENT UPON DYFS' MEANINGFUL COMPLIANCE WITH THE OBLIGATION TO MAKE "DILIGENT EFFORTS" TO ENCOURAGE THE PARENTAL RELATIONSHIP. FOR EXAMPLE, VISITATION BETWEEN A PARENT AND HIS OR HER CHILD IN FOSTER CARE IS USUALLY REGULATED BY DYFS WHICH SETS THE SCHEDULE FOR THE VISITATION AND OFTEN SUPERVISES THE VISITS. AS A RESULT, THE PARENT'S ABILITY TO MAINTAIN REGULAR VISITATION OR OTHER CONTACT WITH THE CHILD DEPENDS UPON DYFS' WILLINGNESS TO ARRANGE AND PERMIT SUCH VISITATION TO OCCUR. BECAUSE DYFS' ACTIONS IN THIS REGARD SIGNIFICANTLY IMPACT UPON THE DETERMINATION OF WHETHER OR NOT A PARENT HAS MAINTAINED A RELATIONSHIP WITH THE CHILD, N.J.S.A. 30:4C-15 SHOULD BE AMENDED TO MORE PRECISELY DEFINE THE "DILIGENT EFFORTS" DYFS IS REQUIRED TO UNDERTAKE.

AGAIN, THE PUBLIC ADVOCATE URGES THIS COMMITTEE TO REVIEW THE DEFINITION OF "DILIGENT EFFORTS" PROPOSED IN S-2173. IN DEFINING DYFS' OBLIGATION, THE PUBLIC ADVOCATE ENCOURAGES THIS COMMITTEE TO CONSIDER DYFS' CENTRAL ROLE IN MAKING SUITABLE ARRANGEMENTS FOR VISITATION BETWEEN PARENT AND CHILD AND FOR PERMITTING COMMUNICATION BETWEEN THE PARENT AND CHILD WHILE THE CHILD IS IN DYFS' CARE. DYFS MUST BE REQUIRED TO MAKE ALL REASONABLE ATTEMPTS, AND DEVOTE ALL NECESSARY RESOURCES, TO ASSIST, DEVELOP AND ENCOURAGE A MEANINGFUL RELATIONSHIP BETWEEN THE PARENT AND CHILD. MOREOVER, AS ALSO IDENTIFIED IN S-2173,

WHERE A PARENT IS INSTITUTIONALIZED OR INCARCERATED, DYFS MUST MAKE ADDITIONAL ACCOMMODATIONS IN ACCORDANCE WITH THE PARENT'S CIRCUMSTANCES TO PERMIT THE PARENT-CHILD RELATIONSHIP TO FLOURISH. NOTHING LESS CAN SATISFY DYFS' LEGAL RESPONSIBILITY TO PRESERVE AND STRENGTHEN FAMILY LIFE.

THIRD, AND PERHAPS MOST IMPORTANTLY, THE PUBLIC ADVOCATE SUPPORTS S-2580'S RECOGNITION THAT THE PARENT'S EFFORT TO REMEDY THE CIRCUMSTANCES OR CONDITIONS THAT LED TO PLACEMENT IS AN ESSENTIAL FACTOR TO BE CONSIDERED IN THE TERMINATION ANALYSIS. MORE THAN SIMPLY REQUIRING A PARENT TO PLAN FOR THE CHILD'S RETURN, THE CHILD'S INTERESTS DEMAND A DETERMINATION AS TO WHETHER OR NOT THE PARENT HAS REMEDIED THE UNDERLYING CONDITION THAT NECESSITATED THE CHILD'S REMOVAL. IN INCORPORATING SUCH A CONSIDERATION INTO THE TERMINATION LAW, HOWEVER, IT IS ESSENTIAL TO REALIZE THAT THE BURDEN UPON THE PARENT IS ONLY TO SHOW THAT THE RISK OR DANGER TO THE CHILD'S WELFARE HAS BEEN REMEDIED. AS A LEGAL MATTER, IT IS NOT THE PARENT'S OBLIGATION TO "MAKE IT IN THE BEST INTEREST OF THE CHILD TO RETURN" HOME, RATHER THE BURDEN IS UPON DYFS TO DEMONSTRATE AFFIRMATIVELY THAT THE CHILD WILL BE HARMED OR ENDANGERED IF PERMITTED TO RETURN TO HIS OR HER PARENT. SEE IN RE GUARDIANSHIP OF J.P.M., 210 N.J. SUPER. 512, 519 (APP. DIV. 1985); IN RE COPE, 106 N.J. SUPER. 336 (APP. DIV. 1969).

S-2580, AS DRAFTED, REQUIRES A COURT TO CONSIDER WHETHER "THE EFFORTS THE PARENT HAS MADE TO REMEDY THE CIRCUMSTANCES OR

CONDITIONS" MAKE IT IN THE BEST INTEREST OF THE CHILD TO RETURN TO THE CHILD'S HOME". THIS LANGUAGE IMPOSES AN UNDUE BURDEN UPON THE PARENT. FOR EXAMPLE, AS DRAFTED, S-2580 SUGGESTS THAT EVEN WHERE A PARENT HAS SUCCESSFULLY REMEDIED ALL CONDITIONS THAT NECESSITATED PLACEMENT OF THE CHILD, PARENTAL RIGHTS MAY STILL BE TERMINATED IF AN INDEPENDENT FACT FINDER DETERMINES THAT THE CHILD'S INTEREST MAY BE BETTER SERVED BY DYFS ACCEPTING GUARDIANSHIP. SUCH A PROVISION INVITES INVIDIOUS DISCRIMINATION AGAINST DISADVANTAGED PARENTS WHO, THOUGH HAVING REMEDIED ANY THREAT TO THEIR CHILD, ARE FINANCIALLY OR OTHERWISE UNABLE TO "BEST" SERVE THEIR CHILD'S INTEREST WHEN COMPARED TO A MORE AFFLUENT OR MORE EDUCATED FOSTER PARENT. AS HELD IN IN RE COPE, "IT IS [] ENCUMBENT UPON [DYFS] TO SHOW MORE THAN THAT IT WILL PROVIDE A BETTER HOME FOR THE CHILD. IT MUST DEMONSTRATE AFFIRMATIVELY THAT THE CHILD'S "BEST INTEREST" WILL BE SUBSTANTIALLY PREJUDICED IF HE IS PERMITTED TO REMAIN WITH HIS PARENT. . . ." 106 N.J. SUPER. 336 (APP. DIV. 1969). ACCORDINGLY, CONSIDERATION SHOULD BE GIVEN ONLY TO WHETHER A PARENT HAS REMEDIED THE CIRCUMSTANCE OR CONDITIONS THAT LED TO PLACEMENT THEREBY HAVING ELIMINATED ANY THREAT OF HARM TO THE CHILD. FOR THIS REASON, THE PUBLIC ADVOCATE RECOMMENDS THAT THE LANGUAGE OF S-2580 BE REVISED SO THAT PROVISION (E) OF N.J.A.C. 30:4C-15 WILL READ "IT APPEARS THAT THE EFFORTS THE PARENT HAS MADE TO REMEDY THE CIRCUMSTANCE OR CONDITIONS THAT LED TO PLACEMENT WARRANT RETURN HOME."

S-2595: LIMITING THE REPEATED PLACEMENT OF CHILDREN
 INTO FOSTER CARE.

THE PUBLIC ADVOCATE STRONGLY SUPPORTS THE NEED TO LIMIT THE REPEATED PLACEMENT OF CHILDREN IN FOSTER CARE. AS RECOGNIZED IN S-2595, FREQUENT REPLACEMENT IS DETRIMENTAL TO A CHILD'S DEVELOPMENT. IN ADDITION, THE FREQUENT PLACEMENT OF CHILDREN INTO FOSTER CARE RUNS CONTRARY TO THE GOAL OF PERMANENCY SO CLEARLY SET FORTH IN THE FEDERAL ADOPTION ASSISTANCE AND CHILD WELFARE LAWS.

HAVING SAID THIS, HOWEVER, WE MUST EXPRESS OUR CONCERN THAT THE ABSOLUTE PROHIBITION AGAINST THE USE OF A VOLUNTARY AGREEMENT AS THE BASIS FOR REPLACING A CHILD IN FOSTER CARE PROPOSED IN S-2595, SUBSECTION 5, MAY NOT BE IN THE BEST INTERESTS OF THE CHILD IN SOME LIMITED CIRCUMSTANCES. IT IS OUR CONCERN THAT SUCH AN ABSOLUTE PROHIBITION REACHES TOO FAR.

FOR EXAMPLE, A PARENT FACING A TEMPORARY CRISIS, SUCH AS A MEDICAL EMERGENCY, WHO HAS NO RELATIVES CAPABLE OF CARING FOR HIS OR HER CHILD DURING A BRIEF HOSPITALIZATION MAY REACH OUT TO DYFS SEEKING TO VOLUNTARILY PLACE THIS CHILD IN FOSTER CARE EVEN THOUGH THE CHILD HAD BEEN IN FOSTER CARE ONCE BEFORE FOR REASONS TOTALLY UNRELATED. SHOULD WE DENY THIS PARENT THE ASSISTANCE HE OR SHE SEEKS OUT AS BEING IN THE CHILD'S BEST INTEREST SIMPLY BECAUSE THIS CHILD HAS BEEN IN PLACEMENT ONCE BEFORE? OR, EVEN MORE TROUBLING, WOULD WE REQUIRE DYFS IN THIS CIRCUMSTANCE TO

ATTEMPT TO LABEL THIS PARENT AS ABUSIVE OR NEGLECTFUL IN ORDER TO GAIN A COURT ORDER PERMITTING THE REPLACEMENT?

THOUGH STRONGLY SUPPORTING THE NEED TO SUBSTANTIALLY CURTAIL USE OF VOLUNTARY AGREEMENTS AS THE BASIS FOR REPLACEMENT OF CHILDREN IN FOSTER CARE, THE PUBLIC ADVOCATE NEVERTHELESS URGES THE COMMITTEE TO RECOGNIZE THAT THERE MAY BE CERTAIN LIMITED INSTANCES UNDER WHICH SUCH REPLACEMENT MAY BE APPROPRIATE. IN ORDER TO MAXIMIZE THE ALTERNATIVES AVAILABLE TO MEET THE NEEDS OF CHILDREN, IT IS THE PUBLIC ADVOCATE'S RECOMMENDATION THAT S-2595 BE AMENDED TO INCLUDE AN EXCEPTION TO THE CATEGORIAL PROHIBITION AGAINST VOLUNTARY REPLACEMENTS WHERE A PARENT DEMONSTRATES A TEMPORARY NEED TO PLACE THE CHILD THAT RESULTS FROM EMERGENT AND UNFORSEEABLE CIRCUMSTANCES.

IN ADDITION, THE PUBLIC ADVOCATE RECOMMENDS AN AMENDMENT TO S-2595, PARAGRAPH 3, SUBSECTION (D). S-2595 RESPONDS TO A CONCERN THAT CHILDREN WHO ARE REPLACED INTO FOSTER CARE BE PROMPTLY IDENTIFIED AS "ADOPTION POTENTIAL" CASES SO AS TO FACILITATE PERMANENCY PLANNING. BY REQUIRING IMMEDIATE REFERRAL OF ALL FOSTER CARE REPLACEMENTS TO THE ADOPTION RESOURCE CENTER, HOWEVER, S-2595 GIVES PRIMACY TO PLANNING FOR DYFS' EVENTUAL ACCEPTANCE OF GUARDIANSHIP RATHER THAN EMPHASIZING THE NEED TO CONTINUE TO MAKING VIGOROUS EFFORTS TO ACHIEVE FAMILY REUNIFICATION. SUCH A SHIFT IN EMPHASIS REPRESENTS A DEPARTURE FROM DYFS' PRACTICE, AND INDEED FROM ITS LEGAL MANDATE, IN THE

FIRST INSTANCE TO DEVOTE ALL NECESSARY RESOURCES AND PLANNING TOWARD REUNITING THE FAMILY.

THUS, IN ORDER TO CORRECT ANY SUGGESTION TO CASEWORKERS THAT REPLACEMENT INTO FOSTER CARE SHOULD RESULT IN AUTOMATIC PLANNING FOR GUARDIANSHIP, THE PUBLIC ADVOCATE SUGGESTS THAT THE ORDER OF INSTRUCTION IN PARAGRAPH 3, SUBSECTION (D) BE REVERSED TO EXPRESSLY STATE AT THE OUTSET THAT THE CASE GOAL REMAINS REUNIFICATION OF PARENT AND CHILD AND THAT ONLY WHERE REUNIFICATION IS NOT FEASIBLE, SHALL THE "ADOPTION POTENTIAL" CASE GOAL BE PURSUED.

S-2577: PROVIDING LEGAL REPRESENTATION FOR CHILDREN AND INDIGENT PARENTS IN PROCEEDINGS INVOLVING THE TERMINATION OF PARENTAL RIGHTS.

S-2577 RECOGNIZES THE COMPELLING NEED TO PROVIDE CHILDREN WITH EXPERIENCED LEGAL REPRESENTATION IN PROCEEDINGS TO SEVER THE MOST FUNDAMENTAL BOND BETWEEN PARENT AND CHILD. THE DEPARTMENT OF THE PUBLIC ADVOCATE THROUGH THE LAW GUARDIAN PROGRAM IN THE OFFICE OF THE PUBLIC DEFENDER IS CURRENTLY MANDATED TO REPRESENT CHILDREN IN ABUSE AND NEGLECT PROCEEDINGS INSTITUTED UNDER TITLE 9. THIS MANDATE, HOWEVER, DOES NOT EXTEND TO REPRESENTATION OF CHILDREN IN PROCEEDINGS TO PLACE THEM UNDER DYFS' GUARDIANSHIP PURSUANT TO TITLE 30, THAT IS, WHEN DYFS MOVES TO TERMINATE PARENTAL RIGHTS. AS A RESULT, CHILDREN WHO HAVE ALREADY ESTABLISHED RELATIONSHIPS WITH THE LAW GUARDIAN WHO REPRESENTED THEM AND ADVOCATED FOR THEM UPON THEIR INITIAL ENTRY INTO THE

FOSTER CARE SYSTEM ARE DEPRIVED OF THE OPPORTUNITY TO HAVE THIS SAME ADVOCATE CONTINUE TO PROTECT THEIR INTERESTS DURING THE OFTEN COMPLEX GUARDIANSHIP AND TERMINATION PROCEEDINGS.

S-2577 WOULD AUTHORIZE THE DEPARTMENT OF THE PUBLIC ADVOCATE, IN ANY PROCEEDINGS BROUGHT FOR THE TERMINATION OF PARENTAL RIGHTS OR FOR GUARDIANSHIP, TO PROVIDE FOR ANY CHILD THE SERVICES OF A LAW GUARDIAN. THE PUBLIC ADVOCATE SUPPORTS THIS INITIATIVE. THE BEST INTERESTS OF THE CHILD IN THESE PROCEEDINGS ARE OFTEN DISTINCT FROM ANY OF THE OTHER PARTIES REPRESENTED AND MUST BE FORCEFULLY VOICED IN ORDER TO GAIN ATTENTION. MOREOVER, BY PROVIDING CHILDREN WITH REPRESENTATION THROUGH THE EXISTING LAW GUARDIAN PROGRAM, WHICH HAS OVER THE YEARS DEVELOPED SUBSTANTIAL EXPERTISE AND FAMILIARITY WITH THE CHILD WELFARE SYSTEM, S-2577 WILL ENSURE THAT CHILDREN ARE REPRESENTED BY EXPERIENCED COUNSEL WHO ARE COMMITTED TO THE PROTECTION OF THE CHILD'S BEST INTERESTS. HOWEVER, TERMINATION OF PARENTAL RIGHTS CASES RAISES THE MOST COMPLEX LEGAL ISSUES AND FACTUAL SITUATIONS IN THE FAMILY COURT BECAUSE OF THE IMPACT ON ALL THE FAMILY MEMBERS.

IN ORDER FOR THE DEPARTMENT OF THE PUBLIC ADVOCATE TO REPRESENT CHILDREN IN THESE ADDITIONAL PROCEEDINGS, ADDITIONAL STAFF ATTORNEYS, SUPPORT STAFF AND OTHER RESOURCES MUST BE MADE AVAILABLE. GIVEN THE EXISTING CASE LOAD OF THE LAW GUARDIAN PROGRAM, THE DEPARTMENT OF THE PUBLIC ADVOCATE IS PRESENTLY

UNABLE TO TAKE ON THE ADDED RESPONSIBILITY OF REPRESENTING CHILDREN IN THESE PROCEEDINGS ABSENT THE ADDITIONAL RESOURCES. THUS, IN ORDER TO FULLY EFFECTUATE THE PROVISIONS OF S-2577, AN ANNUAL APPROPRIATION SUFFICIENT TO PROVIDE THESE RESOURCES IS NECESSARY. WITHOUT THESE FUNDS, THE CHILDREN WOULD BE DEPRIVED OF MEANINGFUL REPRESENTATION. IT IS FOR THIS REASON THAT WE URGE YOU TO RECOGNIZE THAT THE CRITICAL NEED FOR EXPERIENCED REPRESENTATION OF CHILDREN IDENTIFIED IN S-2577 CAN ONLY BE ACHIEVED IF THE NECESSARY FUNDS ARE PROVIDED.

WITH RESPECT TO THE REPRESENTATION OF INDIGENT PARENTS IN GUARDIANSHIP AND TERMINATION PROCEEDINGS, THE PUBLIC ADVOCATE SIMILARLY SUPPORTS THE NEED FOR PROVISION OF EXPERIENCED COUNSEL THROUGH THE LEGAL SERVICES ASSISTANCE PROGRAM. "SIMPLE JUSTICE DEMANDS NOTHING LESS IN LIGHT OF THE MAGNITUDE OF THE CONSEQUENCES INVOLVED." CRIST V. N.J. DIVISION OF YOUTH AND FAMILY SERVICES, 135 N.J. SUPER. 573, 575 (1975). S-2577, HOWEVER, PROVIDES THAT PARENTS ARE TO APPLY FOR COUNSEL THROUGH THE OFFICE OF THE PUBLIC ADVOCATE. BECAUSE THE DEPARTMENT OF THE PUBLIC ADVOCATE WILL BE INVOLVED IN REPRESENTING THE DISTINCT INTERESTS OF THE CHILDREN, REQUIRING THE PUBLIC ADVOCATE TO ARRANGE FOR THE PROVISION OF COUNSEL TO THE PARENTS AS WELL CREATES AN UNNECESSARY AND AVOIDABLE CONFLICT OF INTEREST.

S-2577 ALREADY CONTEMPLATES THAT THE ACTUAL REPRESENTATION OF PARENTS IN THESE PROCEEDINGS WILL BE HANDLED BY LEGAL

SERVICES ATTORNEYS OPERATING PURSUANT TO AN AGREEMENT WITH THE DEPARTMENT OF COMMUNITY AFFAIRS. MOREOVER, THE DETERMINATION OF INDIGENCY AND ENTITLEMENT TO COUNSEL IS MADE BY THE COURT DIRECTLY AND NOT BY THE PUBLIC ADVOCATE. ACCORDINGLY, THE PUBLIC ADVOCATE RECOMMENDS THAT UPON A FINDING OF INDIGENCY, THE COURT MAY REFER PARENTS IN NEED OF REPRESENTATION TO APPLY FOR A LEGAL SERVICES ATTORNEY DIRECTLY THROUGH THE DEPARTMENT OF COMMUNITY AFFAIRS. IN THIS WAY, THE DEPARTMENT OF THE PUBLIC ADVOCATE WOULD NOT BE COMPROMISED BY ANY INVOLVEMENT, EITHER DIRECT OR INDIRECT, IN THE REPRESENTATION OF PARENTAL INTERESTS. THIS WOULD AVOID ANY CONFLICT OR EVEN APPEARANCE OF IMPROPRIETY THAT MIGHT IMPAIR THE PUBLIC ADVOCATE'S ABILITY TO EFFECTIVELY REPRESENT CHILDREN AND PROTECT THEIR INTERESTS EXCLUSIVELY.

IN CONCLUSION, WE APPLAUD THE COMMITTEE'S EFFORTS TO CRITICALLY REEXAMINE THE NEEDS OF CHILDREN INVOLVED IN OUR CHILD WELFARE SYSTEM AND TO BEGIN TO ADDRESS THE CHANGES NECESSARY TO PROTECT THEIR BEST INTERESTS. WE ARE EAGER TO ASSIST THIS COMMITTEE IN ITS ENDEAVORS IN ANY WAY POSSIBLE AND TO WORK TOGETHER IN PROTECTING OUR MOST VULNERABLE CITIZENS -- THE CHILDREN.

THANK YOU.



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TO: Senator Catherine A. Costa, Chairperson
Members, Senate Children's Services Committee

FROM: Ciro A. Scalera, Executive Director
Cecilia Zalkind, Assistant Director
Association for Children of New Jersey (ACNJ)

DATE: April 30, 1990

RE: Public Hearing on Senate Bills 2577, 2586 and 2595

The Association for Children of New Jersey is pleased to testify today in strong support of the bills under discussion by the committee. We commend Senator Costa and members of the committee for following up on these issues, which were initially raised at the committee's public hearing in December concerning adoption services.

These bills represent some important initiatives which we believe will strengthen services for children needing adoption placement. They strike a necessary balance in protecting the rights of children and the rights of parents. Our comments reflect our strong support for these bills as well as some suggestions for further amendments.

S-2577 -- Legal Representation for Parents and Children in Termination of Parental Rights Proceedings

Legal representation for parents involved in termination of parental rights proceedings is currently handled by court appointment of pro bono attorneys. Despite well-intentioned attorneys and successful training projects, such as ACNJ's joint project with the Young Lawyer's Division of the New Jersey State Bar Association, the appointment of volunteer attorneys does not provide adequate representation in proceedings so serious as to be described as the death penalty cases of family law.

Children in such cases are represented by the appointment of guardians ad litem on a pro bono basis. Even if the child has had a Law Guardian from the Public Advocate's Office appointed to represent him or her in a child abuse case, the Law Guardian cannot continue if the case moves on to termination, requiring the child to develop a relationship with another person.

This bill would expand the Law Guardian Program to represent children in termination of parental rights cases. It would also provide funding to Legal Services to represent parents in such

cases. We believe that this bill is important in providing adequate legal assistance to parents and children faced with the termination of their relationship.

Our sole concern about the bill is that it does not contain an appropriation. Without additional funding, it would be impossible for the Law Guardian Program to be expanded or the Legal Services Program to be initiated. We urge that an appropriation be included in the bill.

S-2580 -- Amending the Termination of Parental Rights Law

ACNJ has for some time advocated for amendments to the current termination of parental rights law in New Jersey to clarify the circumstances under which the state may seek to end the parent-child relationship. We have also consistently called for a more child-focused law in order to provide permanence for children in out-of-home placement who cannot return home. With some amendments, we believe this bill could accomplish both.

We support the intent and most of the provisions of the bill. We do, however, have some suggestions which we believe will strengthen the bill.

1) On page 1, lines 32-33, we would recommend deleting [the time limit for the search shall be completed within one year] and adding that the search shall be completed immediately. This provision of the statute refers to the time that the child enters placement. Searches for parents or other interested relatives should be done immediately by the Division of Youth and Family Services (DYFS) and not delayed for a year.

2) On page 2, beginning at line 31, the amendments to the current section (d) and the proposed new section (e) of N.J.S.A. 30:4C-15 are somewhat confusing. The additions to section (d), for example, require the parent to accomplish tasks which would be impossible to do for a child in foster care or other out-of-home placement. This is significant since all termination cases under this section are brought on behalf of children in out-of-home placement.

We support the intent of these sections, which we believe is to shift the responsibility of the parent from planning for the child's return home to remedying the problems that caused the placement.

We would recommend changing the amended language in lines 31 to 42 to read: to remedy the circumstances and conditions that resulted in the child's out-of-home placement although physically

and financially able to do so. Diligent efforts by the division shall include all services necessary to reunite the family, including parent-child visitation. Sporadic visitation by the parent shall not be a bar to proceeding under this section.

We strongly support the remainder of the bill. The language in section 17 on page 3 clarifies the search and notice procedures required of DYFS, which courts often handle differently. Requiring that the final hearing be held within three months of filing makes these cases a priority of the court.

S-2595 -- Limiting the Repeated Placement of Children

We very strongly support the provisions and intent of this bill. The repeated placement of children in and out of foster care is a very serious issue for many children. ACNJ's Splintered Lives report indicated that 40% of the children in the study had been in foster care not once but many times before. These children had been subjected to constant rejection and separation from everything they had known and loved not once but many times.

This problem is due to two factors: the dependence of many parents on the foster care system to resolve family problems and the failure of DYFS to look beyond the immediate family crisis to longterm planning for the child. Even when the family has a long history with DYFS, the agency's inclination is to consider only the current problem.

This bill has several important provisions which we believe are essential in articulating DYFS' responsibility to act in the best interests of children, especially those referred to the agency for placement for the second time.

1) The bill requires DYFS to include prior placement history as part of the new case plan for the child and family and to notify the child placement review board that this is a repeat placement. This information is essential to adequate planning for the child. Specific case goals and time limits are also an important element of a case plan in a repeated placement and are clearly articulated in this bill.

2) The bill requires DYFS to place the child in his or her previous foster home if possible. This is essential to continuity and stability for the child. Very often the DYFS worker will not think to consider the prior foster home or may choose to place the child elsewhere so that no one will get "too attached." Foster parents who have advocated for a child are often informally "blacklisted" by DYFS and are not even told if the child returns to foster care.

3) Section 3 (d) on page 3 requires DYFS to identify the case as "adoption potential" and to conference the case with the adoption

resource center at the time of the repeat placement. Even though adoption may not become the goal for the child, this is important to ensure that the child may be considered for adoption in a timely fashion should he or she not be able to return home. The child will not be forced to linger in foster care unnecessarily while DYFS begins work toward a new goal.

4) Most important, the bill prohibits DYFS from placing a child in foster care a second time on the basis of a voluntary placement agreement, requiring instead that DYFS seek a court order for a repeat placement. We strongly support this provision.

New Jersey relies far too heavily on voluntary placement agreements -- 80% of DYFS' out-of-home placements are based on the voluntary consent of the parent. Such agreements offer inadequate protection for the child and family. We believe that this limitation is appropriate.

In closing, we again commend this committee for its courage and leadership in proposing three very important bills on behalf of children in the state's foster care system.

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The Organization
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Legal Services Programs

Bergen County Legal Services
Camden Regional Legal Services
Cape-Atlantic Legal Services
Essex-Newark Legal Services
Hudson County Legal Services
Hunterdon County Legal Service
Legal Aid Society of Mercer County
Middlesex County Legal Services
Legal Aid Society of Morris County
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Passaic County Legal Aid Society
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Connie Pascala, Senior Attorney
Susan K. Perger, Publications Coordinator
Margaret Stevenson, Senior Attorney

To: Senator Catherine A. Costa, Chairperson
Members, Senate Children's Services Committee

FROM: Nancy Goldhill
Legal Services of New Jersey

DATE: May 2, 1990

RE: Public Hearing on Senate Bills 2577, 2580, and 2595

S2577 -- Representation for Parents and Children in Termination
of Parental Rights Cases

We enthusiastically support the concept of a bill providing for representation of children and parents in termination of parental rights cases. At present, children and indigent parents are entitled to assigned counsel in actions to terminate parental rights under Title 30. However, counsel may be assigned at random and are not entitled to compensation for their work. This system fails to insure that families will be represented by attorneys who are familiar with the issues involved in termination cases. Given the potentially devastating consequences of such cases, it is critical that parents and children be represented by lawyers who have expertise in this area of law. Parental rights termination cases are generally demanding and time consuming. Although Legal Services attorneys

are experienced in handling these cases, we lack the resources to provide representation in many cases. A more effective system of representation would be created by funding Legal Services to represent parents and funding the Public Advocate's Law Guardian office to represent children.

While S2577 seeks to enable Legal Services and the Public Advocate to provide representation to parents and children, in its, present form the bill raises a number of problems. First, it represents a version that was amended substantially before being released from committee in the last legislature; the most recent version should be the starting point now. In the previous hearings before the Assembly Judiciary Committee on a bill identical to this version, Legal Services and a number of other groups raised serious objections. The bill was redrafted to address those concerns and passed out of that committee in a different form.

To reiterate these previous objections, first the Senate version of the bill contains no appropriation. Without additional funding, Legal Services and the Public Advocate will be unable to handle the volume of cases. In the 1989 court year alone, 925 new parental rights termination cases were filed. The bill that passed in the Assembly committee contained a \$1 million appropriation.

Second, this bill, as drafted, provides that parents may apply to the Public Advocate for representation. The Public Advocate can, by regulation, provide for parents to be represented by Legal Services. This would require the Public

Advocate's office to administer the program representing parents, to promulgate a regulation concerning this representation, and to determine how much money should be allotted for parental representation. This makes no sense, first since the bill contains no appropriation, and second since the Advocate has no regulatory authority over Legal Services, a system of private non-profit corporations. Further, this would create a conflict of interests for the Public Advocate's office as they represent the children in these cases. They should not be charged with overseeing the representation of parents or determining the amount of funding available for such representation. Indeed, to avoid conflict, funding for the representation of parents and the representation of children should be separately designated. Legal Services has an already established relationship with the Department of Community Affairs which serves as a conduit for LSNJ's state funding. It would be preferable and more logical to appropriate money separately to DCA for Legal Services to represent indigent parents. DCA would then contract with Legal Services of New Jersey to provide these services.

Finally, the bill as drafted makes eligibility dependent upon a court determination. Legal Services, as an independent group of agencies, has always had its own specific income guidelines from which offices determine client eligibility. It is not appropriate for the court to determine who is eligible for Legal Services representation. Even more important, it is essential that parents receive legal advice and assistance much earlier in the placement process, well before the involvement of

a court in a formal Title 30 proceeding, in order to help them avoid later loss of their children. This would be less likely to happen if referral to Legal Services depended on the courts.

The Assembly version of the bill contains an appropriation of \$1 million from the General Fund to be divided evenly between the Public Advocate and DCA, as the funding conduit for LSNJ. Thus, representation of parents and children would be provided and administered separately by two different agencies. This system would provide parents and children with effective representation in parental rights termination cases.

S2580 - Parental Rights Termination Law

We have several concerns with the amendments to C.30:4C-15. First, we oppose the proposed amendment to the fourth ground for terminating parental rights, section (d). This section presently provides for termination of parental rights where a parent or guardian whose child is in foster care fails to "maintain contact with and plan for the future of the child" for a period of a year. The proposed amendment would look instead at whether the parent has failed to provide the child with food, clothing, shelter and other care even though physically and financially able to do so. However, when the child is placed out of the home, the parent is generally not the one expected to provide for daily necessities. The parent cannot be penalized for this failure when he or she does not have physical custody of the child. But, more importantly, this language could allow for children to be removed from their parents merely because of the

parents' poverty. It is unclear precisely what the parent must provide and who will decide whether the parent is truly able financially.

We also object to section (e). This section hinges the child's return home on the parent's behavior while the child was out of the home. Certainly it is critical that parents try to remedy the circumstances that led to the placement of their child in order to get the child back. However, the parents' efforts here must be linked to the division's attempts to help. Both state and federal law require the division to make "reasonable" or "diligent" efforts to prevent the need for foster care placement and to reunify families where placement has been made. This means that the division must provide social and other services necessary to preserve families. If the division fails to assist the parent in preparing to resume custody, the parent should not be penalized for his or her failures. Where removal of the child is necessary, other grounds under the statute will allow it.

Also the bill would specifically allow for termination of parental rights where parents have failed to maintain "regular visitation or other contact with the child". Legal Services frequently hears complaints from parents that visitation is severely restricted by DYFS. The division often has more control over visitation than the parent. It typically limits visitation, claiming that it lacks the resources to provide either transportation or supervision on a more frequent basis. Thus the failure to maintain visitation cannot be considered a basis for

terminating parental rights.

Finally, it appears from the language of the amendment that a parent would not only have to remedy the problems that led to placement but also to show that it is in the child's best interest to return home. This is certainly not a constitutional test of parental rights. Indeed many parents would no doubt fail the test. To terminate parental rights, DYFS must prove that the parents cannot provide a suitable home for their children to the extent that one of the statutory grounds for termination is met. Parents cannot be forced to prove that their home is better than a foster or other home. The result of such a law would be the termination of parental rights for poor parents who, while providing a safe and adequate home, might not be able to provide their children with the best possible home.

If the Legislature decides to include this section in the law, it must add language requiring "diligent efforts" on the part of the agency. We propose the following alternative language:

e) it appears that a child has been under custody of the division for a period of at least one year, that the circumstances or conditions that led to the removal or placement of the child still exist, that there is little likelihood that the conditions will be remedied, that the division has made diligent efforts to assist the parents in remedying the conditions, and that additional services from the division would not enable the parents to be reunited with the child.

And, because diligent efforts are such an important part of the division's obligation to families, the law must define

diligent efforts. Senator Lipman's bill, S2173, is useful in this regard. Borrowing some language from that bill, we propose the following definition of diligent efforts:

Diligent efforts means reasonable attempts by the division to develop, encourage and strengthen a meaningful relationship between the parent and child, including but not limited to: (1) consultation and cooperation with the parents in developing a plan for appropriate services; (2) providing necessary social services to the family; (3) facilitating frequent and meaningful visitation and; (4) keeping the parents informed of the child's progress, development and health.

S2595 - Limiting the Repeated Placement of Children in Foster Care

Finally, we have a few brief comments on S2595. Generally, we support the aim of the bill--the protection of children who are repeatedly placed in foster care. However, section 4 of the bill would require DYFS to file a petition for guardianship if the parent or guardian is unwilling or unable to remedy the problems or conditions stated in the child's placement plan. Again, any requirements placed on the parents must be linked to the division's obligation to provide services to assist the parent. Certainly there will be cases where the division's intervention could help parents who otherwise would be unable to remedy existing problems. Thus this section must contain a requirement that the division provide all necessary services to the family before determining whether the parent is unable or unwilling to change.

Section 5 would prohibit voluntary placements in repeat foster care placements. While we believe the present voluntary placement system has many problems, we would not place an absolute prohibition on them. Rather we would allow room for voluntary placements to be made for brief periods where absolutely necessary. For example, where a parent must be hospitalized and has no other caretaker for the children a limited voluntary placement would be appropriate.

Because of the many problems we see with voluntary placements, we suggest that the committee consider a more comprehensive bill limiting all voluntary placements. Approximately 80% of New Jersey's foster care placements are made on a "voluntary" basis. Our experience is that the voluntary placement system is abused. Parents frequently sign agreements to place their children under circumstances that are not truly voluntary, threatened with having their children removed by court order. Often they receive little advice or explanation and do not fully understand the ramifications of signing the agreement. Often, too, these are cases where assistance from DYFS could enable the families to remain together.

Where grounds for involuntary placement exist, it is preferable that the division proceed on that basis and not accept a voluntary placement. When the placement is made by court order, the parents will have access to legal assistance. Also we propose that parents be advised to go to Legal Services for assistance prior to signing any voluntary agreement and that they

receive a written explanation of the voluntary agreement and its implications.

We appreciate your work in this important area and thank you for this opportunity to share our concerns with you.

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