



LEGAL
SERVICES

INCORPORATED

SUPPORT

S.1749-C (Golden) and A.10218-A (N. Rivera)

MFY Legal Services, Inc. strongly supports S.1749-C and A.10218-A, which would expand the definition of extraordinary circumstances in DRL 72 to include all relative caregivers related to the absent parent within three degrees of consanguinity. MFY is a 49-year-old nonprofit organization that provides free civil legal services to approximately 7,500 poor and low-income New Yorkers annually in housing, public benefits, health, consumer, foreclosure and employment matters. We prioritize services to vulnerable and under-served populations, including persons who are elderly, disabled, poor or immigrant, while simultaneously working to end the root causes of inequities through impact litigation, law reform, and policy advocacy. MFY's Kinship Caregiver Law Project provides advice, counsel, and representation to grandparents and other family members who are taking care of related children, generally outside of the formal foster care system, in custody, guardianship and adoption matters.

Based upon this work, MFY advocates for enactment of the proposed legislation because it will help stabilize New York families, promote children's security, and help prevent children from entering the foster care system.

150,000 to 250,000 children in New York State are currently being raised in homes where non-parent relatives are responsible for their care, according to recent Census data. The vast majority of these children are being cared for informally by relatives outside of the foster care system.

For these families, achieving safety and stability for children is often a significant challenge. In a custody or guardianship proceeding between a caregiver and an absent parent, caregivers must prove to have "extraordinary circumstances" before courts will consider the best interests of children. In 1976, the Court of Appeals ruled in *Bennett v. Jeffreys* that extraordinary circumstances include: abandonment, unfitness, surrender, or an "extended disruption of custody." Kinship caregivers invariably ask how long a period of time qualifies as an extended disruption, and case law provided no defined time period. However, in 2004, DRL § 72 was amended to provide a clear answer for grandparents: a "continuous 24 month period" constitutes an "extended disruption."

Because DRL § 72 applies only to grandparents, however, it permits them, but not other relative caregivers, to claim an "extraordinary circumstance" when they can prove two years of continuous residence in their home by a grandchild. The proposed legislation modifies DRL § 72 to include caregivers related to the absent parent within three degrees of consanguinity. Thus all relative caregivers will benefit from the two-year rule, a change that would greatly aid relative caregivers to successfully petition courts for custody or guardianship after caring for children for two years. This bill puts all relatives on an equal playing field when proving extraordinary circumstances. It also provides judges with clear guidance about the standard for finding extraordinary circumstances based on extended

disruptions of custody for all relatives. This legislation is supported by the kinship community and their advocates, as well as by child advocates.

For the reasons stated above, MFY Legal Services strongly supports the passage of S.1749-C and A.10218-A.

Please call Sara Wood at 212-417-3792 or swood@mfy.org if you have any questions.