NEW JERSEY STATE BAR ASSOCIATION

The New Jersey State Bar Association Opposes the Newly Amended S4510/A5761, Which Clarifies Procedures in Certain Contested Child Custody Cases; Urges the Amendments Passed in the Senate in June Be Reinstated

The New Jersey State Bar Association strongly urges that recent amendments to S4510 (Lagana)/A5761 (Carter), voted out of the Assembly Judiciary Committee, be rejected in favor of those that were passed by the Senate in June 2025 (hereinafter referred to as "the previous Senate version"). The bill seeks to amend the child custody statute to address a child's expressed preference in matters where there are parent-child contact issues and reunification therapy is being considered. The previous Senate version reflected input and agreement from a number of stakeholders, including retired judges, family law practitioners, child welfare practitioners, mental health experts and child welfare experts to more fully address the stated concerns with New Jersey's child custody statute (N.J.S. 9:2-4). The recent amendments undo most of what was agreed upon.

Child custody matters are complex, and there are often times when reunification, and other therapy, is considered by the court to benefit the family and the children. The NJSBA has a number of concerns with the newly amended S4510/A5761, which essentially eliminates access to not just reunification therapy, but any type of therapy - and places the child squarely in the middle of a high conflict child custody dispute. A summary of our concerns with S4510/A5761 are:

1. **The elimination of any reference to reunification therapy greatly expands the scope of the bill.**

The previous Senate version provided factors for the court to consider in deciding whether it should order reunification therapy. This is a therapy ordered when a child refuses or resists contact with one parent. The new S4510/A5761 eliminates any reference to reunification therapy, making the standards and factors applicable to any type of therapy that may be ordered in child custody matters. The scope of this bill is now vastly beyond the original intent.

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2. **The requirement that therapy may only be ordered if it is "scientifically valid and have generally accepted proof of effectiveness and therapeutic value" would require a plenary hearing on the issue to determine whether the standard has been met.**

This language ensures that the therapy standard would never be met because this standard is not measurable in these terms. Furthermore, this would require expert testimony and, when taken as a whole, significantly impact those families that cannot afford attorneys and experts to meet the standard. To restrict the court's ability to order any type of therapy based on this standard will create harm to children and parents. It will significantly disadvantage low-income families who will not have resources to prove the scientific validity of therapy being requested. For example, the court is often faced with two parents with joint legal custody who disagree on whether a child needs an individual therapist. The language as drafted could prevent the court from ordering that the child receive therapeutic treatment because the parents do not have the ability to present an expert on the scientific validity of a therapeutic process.

3. **The requirement that both parents must consent to therapy is problematic because the alienating parent will never consent and therefore no such therapy would ever be ordered or attempted, despite a court's finding that it is in the best interests of the child.**

Even if the court deemed that reunification therapy or any type of therapy was an option for a child and/or a parent, a parent who is actively alienating a child from contact with the other parent would never consent to such treatment, rendering this option moot and placing the issue squarely in the advantage of the alienating parent. Further, an abusive parent might resist therapy to avoid the child revealing abuse. The court cannot protect a child if the statute allows a parent to withhold consent to therapy. This could significantly and adversely impact victims of domestic violence. The question of whether it is in the best interests of the child to engage in such therapy is not even considered over the objection of a parent who merely does not want the child to have a relationship with the other parent. Moreover, the child is now with an alienating parent, which may not be in the best interests of the child. It is also unclear what is a "sufficient age" for therapy. Based upon the amendatory language, it would appear that reunification is never an option for a child who is not of "sufficient age," which is not clearly defined. Even if it is, this supplants the best interest of the child standard which is the accepted standard by which any of these decisions should be held to.

4. **The new amendments to the bill remove the court's discretion to implement alternative options to therapy, including changes to parenting time or custody arrangements.**

In addition to the concerns listed above, the ability of the court to implement alternative options to reunification therapy, including a change of custody, is eliminated under the new amendments. This removes discretion from a judge to make appropriate case-by-case determinations based upon facts sensitive to that family.

5. **By making safety a "threshold issue," which is – and has always been – a factor in child custody matters, the new amendments would require a hearing on this factor before child custody can be decided and would require utilizing allegations and not actual findings of abuse, neglect or domestic violence as a basis for a decision on custody and/or reunification therapy.**

The fact-sensitive analysis that judges must undertake before making any findings requires a recitation of the child custody factors, found at N.J.S. 9:2-4(c), and takes into account not just those factors, but any other factor deemed relevant to the analysis. Safety is already a factor in this analysis ("the safety of the child, and the safety of either parent from physical abuse by the other parent"). Under the newly amended bill, the threshold issue of safety is elevated above all other enumerated factors in making a custody determination. While the NJSBA supports the concept of protecting a child's safety, the bill, as written, is based only on allegations, and not an actual finding that domestic violence has occurred. This is contrary to the intent of Kayden's Law, referenced in the newly amended bill, which is specific to domestic violence and requires a *finding* by a court of abuse or domestic violence. Furthermore, domestic violence is already a factor in N.J.S. 9:2-4(c) ("the history of domestic violence, if any"). In high conflict child custody matters where reunification is considered, these matters almost always include allegations of child abuse and/or neglect and domestic violence, but a small percentage result in an actual finding of child abuse and/or neglect and domestic violence. The language in the new amendments, however, elevates safety as the "threshold issue" and ignores those other factors that contribute to a finding that is in the best interest of the child. It also creates a scenario that potentially incentivizes the potential misuse of making such allegations, as they could negatively impact a case to the benefit of the complaining parent and against the best interests of the child.

6. **Removal of "substantial" in the language regarding the fitness of a parent could significantly and negatively impact parental rights.**

The current statute provides: "A parent shall not be deemed unfit unless the parent's conduct has a substantial adverse effect on the child." The removal of the word "substantial" significantly expands the circumstances in which a parent could be deemed unfit to include a mere "adverse effect." An adverse effect could mean almost anything that would adversely impact a child (*e.g.* an unfaithful parent; a parent with a handicap; a parent alleged, but not adjudicated, to have neglected a child because of homelessness; the mere fact of wanting a divorce; selling the marital home and moving the child to a new school, etc.). The removal of the word "substantial" has grave implications for the determination of fit parents, not to mention significant Constitutional implications.

7. **The expressed preference of a child, the interview off the record and in chambers, and reporting by the child to the court regarding therapy usurps the best interest of the child standard and places a child squarely in the center of a high conflict custody dispute.**

The new amendments call upon children to tell the court – directly or through reports by a treating therapist – which parent with whom the child wishes to be placed. It mandates that a child "be granted an audience off the record and in private chambers" with respect to express the child's wishes regarding custody. The current statute already allows for such interviews if the judge deems it appropriate but does not mandate an interview because it could be misused as a tool by a parent to control the child custody matter. A judge must have discretion to determine whether to interview the child and, if so, the most appropriate method, based upon the child's best interests. Furthermore, without any consideration for the child's ability to convey such an opinion, the new amendments now put the child in the center of the decision-making when the child may not be able to make a decision for any number of reasons, not the least of which is simply because the child does not feel able to speak freely about which parent that child wishes to be placed. The new amendatory language also provides for the child to submit letters from a treating mental health professional to support the child's capacity and maturity. Letters are generally not considered evidentiary in court and it is not clear that a treating mental health professional would be permitted to opine on the capacity of a child. It is also unclear how the child would file applications with the court as a child is not a party to the matter. Additionally, a

child should not be expected to report to a court on the progress of therapy. The previous Senate version provided for the child's treating therapist to coordinate with a reunification therapist so any concerns of the child would be expressed to the court through the reporting requirement of the reunification therapist. Parents, unfortunately, manipulate their children during high conflict custody matters. It is important that a child be insulated from such manipulations. The language of the newly amended bill , however, encourages parents to pressure their children to request access to the judge and to report to the judge what that parent wants conveyed.

The NJSBA offered amendments to achieve the stated aim of the sponsors to ensure that a child's wishes are considered in decisions about how to proceed when there are parent-child contact issues. We agree they should be considered. However, this amended bill places those wishes above any other consideration. We believe that is problematic for a number of reasons and urge you to consider reinstating those amendments that were passed in the Senate in June.

The Previous Senate Version Provided a Workable Framework

The proposed framework supported by the NJSBA and included in the previous Senate version of the bill for the court to consider when a litigant makes an application for reunification therapy or a litigant opposes such an application included a non-exhaustive list of factors that would guide judges in their decisions in these matters and provide a roadmap for judges to reference those factors in their decisions. The factors also further assist litigants who do not have counsel when they are seeking the court's intervention in these matters. They supplement the court rules and longstanding precedent that currently provide guidance about a child's appearance before a judge or consideration of those treatment providers whose information is relevant to whether reunification, or any other, therapy or alternative options should be ordered.

These factors include:

- The claimed reason(s), extent and duration of the parent-child contact and/or relationship problem from the perspective of each parent and the child (if the child is deemed by the court to be of sufficient age, capacity and maturity to express their reason(s));
- The child's age, capacity and maturity level, including whether the child has special needs and whether those special needs impact on the child's capacity and maturity level;

- The position of each parent and the child (if the child is deemed by the court to be of sufficient age, capacity and maturity to express a position) regarding reunification therapy;
- Any conduct claimed by one parent against the other parent that weighs in favor of or against the implementation of reunification therapy or other form of remedy;
- Any history of therapy in which the child was involved, including, but not limited to, individual, family or reunification therapy;
- Any prior interventions or other efforts that were implemented and the results thereof.

The amendments that were passed by the Senate in June provide for court oversight of reunification therapy and give the court discretion to determine whether to continue therapy, implement alternative options to address the parent-child relationship, or suspend or cease therapy altogether. This eliminates the necessity of experts to make this determination and makes such a request to the court accessible to all litigants.

For all of the reasons noted above, the NJSBA urges you to oppose the newly amended version of S4510/A5761 and to reinstate the amendments to S4510 that were passed in the Senate in June.