



## Empire Justice Center

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### Memorandum of Support

#### **Maximize the Income of Low income Children who live in Families That Receive Public Assistance S.4809A (Persaud); A.4256A (Hevesi)**

This bill would amend Social Services Law (SSL) 131-c (1) to permit parents and non-parent caregivers to exclude children with income from the public assistance household. This amendment would make the treatment of the unearned income of children consistent with the treatment of the earned income of children on public assistance, which is entirely disregarded as long as they are in school. Social Services Law 131-a (8) (a) (ii). Given the current inadequacy of the public assistance grant, which for most families does not exceed 50% of the poverty level<sup>1</sup>, this bill would allow children who have income from absent or deceased parents (such child support, or Social Security Survivor's or Disability benefits) to retain that income and remain off of public assistance if it is beneficial for the family of the child to do so.

Social Services Law § 131-c (1) currently requires that when a minor is named as an applicant for public assistance, that his or her parents and minor brothers and sisters also apply for assistance and be included in the household for purposes of determining eligibility and grant amount. Although the statute uses the phrase "minor brothers and sisters," the law has been used to require the income of half-siblings to be applied as income against the other half-sibling to reduce the amount of the public assistance benefits of the child with no income. Under the current statute, the unearned income of any child, such as child support or social security survivor's benefits is considered available to the entire household, and reduces the entire grant of the household accordingly, unless disregarded under some other provision of law.

This bill would particularly benefit non-parent caregivers of children who have parents who are unable to care for them due to the death, drug addiction, incarceration or disability of the parent. These relatives are often on fixed incomes with limited resources. Studies show that children placed in care with relatives fare much better emotionally and intellectually than

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<sup>1</sup> For example, in most counties, the total public assistance grant for a household of two, meant to cover shelter, utilities, heating and all other needs is under \$650 per month. 18 NYCRR 352.2, 352.3. The poverty level for a household of two is \$1409 per month. 84 Fed. Reg. 1167, 1168 (2/1/19).

children who go into foster care with strangers.<sup>2</sup>

Current law requires the income of half siblings in a public household be applied to support the income of any other half-siblings in the household. This means that when a non-parent caregiver, who has no legal responsibility for the support of a child in their care takes in a second child with income, the public assistance grant of the first child is reduced. For example:

*A grandparent, who lives on a fixed income of Social Security Retirement benefits, is taking care of a grandchild. The child is receiving a "child only" grant, which is calculated without taking the grandparent's income into consideration.*

*If the grandparent takes in a second child who is the half-sibling of the grandchild, and that half-sibling has Social Security Survivor's or Disability benefits because the child's parent has died or become seriously disabled, that income will be applied against the needs of the first grandchild receiving the child only grant. This generally results in the reduction or elimination of that benefit, in effect, making one grandchild responsible to support the other.<sup>3</sup>*

This unfair result is remedied by this bill which would allow the caregiver to request removal of the half-sibling from the case so that the grandchild with income would remain eligible for the child only grant, and the grandchild with income would be continue to be supported with his own income.

Empire Justice Center strongly supports this bill.

**This memorandum was prepared by:**

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<sup>2</sup> G.Wallace and E.Lee, Diversion and Kinship Care: A Collaborative Approach Between Child Welfare Services and and NYS's Kinship Navigator, Journal of Family Social Work, Vol 16 p. 418,419 (2013), available at [http://www.nysnavigator.org/pg/professionals/documents/Wallace\\_Lee\\_2013\\_Diversion.pdf](http://www.nysnavigator.org/pg/professionals/documents/Wallace_Lee_2013_Diversion.pdf)

<sup>3</sup> In our view, this budgeting practice is a violation of Social Services Law § 101 which only makes parents legally responsible for the support of their children.