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NJ Custody Bill S4510/A5761: Good Intentions, Harmful Side Effects

By Charles F. Vuotto
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As the New Jersey Legislature advances the latest iteration of Senate Bill S4510/Assembly Bill A5761 (seeking to modify New Jersey's custody statute, N.J.S.A 9:2-4), lawmakers and advocates should pause to ask whether its well–intended reforms might unintentionally harm families by undermining reunification therapy and elevating children's stated preferences above balanced judicial discretion. This fourth reprint of S4510 and third reprint of A5761 issued on or about Dec. 22, 2025 substantially alters how contested custody cases are handled—but not always in ways that protect families.

Courtesy photo

Charles F. Vuotto, Jr. of A.Y. Strauss.

1. Unclear and Disabling Restrictions on Reunification Therapy

The bill states, "The court shall not order any therapy unless there is *generally accepted and scientifically valid proof of the safety, effectiveness, and therapeutic value of the therapy*. *The court shall require a showing of good cause that therapy is appropriate prior to ordering such therapy. No treatment program intended to reunite a child with a party from whom that child is estranged and to whom that child resists or refuses contact shall be ordered by the court without the consent of both parties, and upon a determination that the child is of sufficient age*."

One of the most controversial aspects of the bill is how it constrains reunification therapy—the clinical intervention designed to help estranged parents and children reconnect after separation. Under prior law and practice, courts could appoint reunification therapists and retain meaningful discretion over the therapeutic process. In the current version of the bill, however, courts may not order such therapy unless there is:

- generally accepted and scientifically valid proof of the safety, effectiveness, and therapeutic value of the therapy
- a showing of good cause that therapy is appropriate
- consent of both parties

These requirements place undue roadblocks in the path of reunification therapy.

Reunification therapy, as described in both the bill and practice, is not a single defined, manualized intervention. It encompasses diverse therapeutic approaches that aim to repair parent-child relationships following estrangement. There is no broad scientific consensus supporting a particular reunification model as conclusively effective in every or even most contexts. Consequently, requiring "generally accepted and scientifically valid proof" sets a high bar that many professionals argue does not exist in the field. This could effectively preclude courts from ordering reunification therapy even in cases where experienced clinicians believe it could benefit the child and estranged parent.

Further, by requiring proof of a therapeutic modality's validity before it may be ordered, the bill conflates clinical development of evidence-based practices with judicial authority to require intervention in a family law context. Many therapeutic practices used in custody disputes—including reunification therapy—do not yet meet the high standards of large-scale randomized clinical trials. That does not mean they lack utility for some families, but under S4510/A5761, courts may decide they cannot be ordered at all without that evidence.

In real world family law practice, courts use a combination of:

- mental health expert evaluations
- detailed behavioral interviews
- observations by clinicians working with families over time, to inform decisions about therapeutic intervention

A mandate for high-level empirical validation could sideline these nuanced, individualized clinical judgments.

The practical consequence is that estranged parents may face a legal impediment to accessing a structured, court-supervised therapeutic process meant to rebuild their relationship with their child—even where there is clinical support for such intervention.

While protecting children's safety is important, these high evidentiary hurdles and consent requirements effectively immunize estranged caregivers from therapeutic attempts to restore attachment, even when reunification is clinically appropriate. These constraints do not merely ensure safety; they blur the line between therapy and litigation, making mental health intervention subordinate to procedural defenses.

The bill goes on to state that:

"*Nothing set forth herein shall allow:*

(a) therapy that cuts off a child from a safe parent who is not physically or sexually abusive and with whom the child is bonded or to whom the child is attached;

(b) the use of force, threat of force, or physical obstruction in circumstances that place the safety of the child at risk; or

(c) the use of undue coercion, verbal abuse, or isolation from the child's family, community, or other sources of support."

These provisions appear to be intended to thwart other options for reunification in the face of an alienating parent or one engaged in gatekeeping.

2. Elevating Child Preference at the Expense of Holistic Best Interests

The bill states "*If the court orders any custody arrangement contrary to the expressed preferences of the child, the court shall specifically place on the record the factors which justify the arrangement and which justify the court's decision to disregard the child's expressed preferences*." This provision appears to elevate the child's preference above all other factors.

Further, the bill states, "A child deemed to be of sufficient age and expressing a desire to speak to the court shall be granted an *audience off the record and in private chambers. The record of the conversation shall be sealed*." This latter provision appears to be contrary to the present Rules of Court that permit the parties to submit questions for an in-camera interview of a child and to receive a transcript of same. (See R. 5:8-6 which provides in pertinent part that "A stenographic or recorded record shall be made of each interview in its entirety. Transcripts thereof shall be provided to counsel and the parties upon request and payment for the cost.")

The bill repeatedly references consideration of a child's expressed preference—codifying it into the child custody statute's findings and declarations. While listening to a child's voice is valuable, critics note several concerns:

- The language can be read as elevating that expressed preference to a quasi–determinative factor rather than one element of a broader best–interest analysis.
- The emphasis on formalizing preference could prompt a parent to coach a child and incentivize contested custody litigation driven by subjective assessments rather than objective circumstances.

Psychologists have long warned that children—especially younger children—do not always have the developmental capacity to understand long-term consequences of custody decisions. A child may express strong preferences rooted in temporary emotions, loyalty conflicts, fear of conflict, or unrecognized external influence. Their capacity to reason intelligently in the legal sense varies widely with age, maturity, and context.

While the bill tries to provide some guardrails with the phrase "*sufficient age and capacity to reason*," this standard is inherently subjective and may pressure courts to rely heavily on a child's stated desires—even when that child's emotional development suggests caution is warranted.

Giving greater weight to a child's preference and insisting that those preferences be represented—without corresponding safeguards ensuring those preferences reflect objective considerations—could unintentionally endorse situations where temporary resistance to a parent is treated as dispositive. For example:

- A child reluctant to see an estranged parent might be deemed mature and capable without in-depth clinical evaluation.
- Even where neutral psychotherapeutic assessment suggests reluctance is part of a complex emotional process (or even perhaps alienation or gatekeeping by the favored parent), the bill's language may lead judges to defer to the child's stated preference.

In effect, elevating preference to near determinative status—more than safety and wellbeing—risks freezing estrangement dynamics in place, rather than encouraging thoughtful, therapeutic approaches to improving parent-child relationships.

Child preference should be considered within context—mature children's insights are valuable, but young children's stated wishes often reflect immediate emotions or parental influence. Overemphasis risks prioritizing short-term feelings over long-term wellbeing and may undermine attachment with a well–situated but less immediately desired parent.

3. Safety Thresholds Could Punish Unsubstantiated Allegations

The bill's legislative declarations designate child safety as a "*threshold issue*" that courts must address. While safety must always be paramount, the formulation in this version of the bill relies on allegations rather than required findings of abuse, neglect, or domestic violence. This elevates safety above all other custody factors—including documented evidence—and could incentivize the strategic use of allegations to tilt custody outcomes or block reunification therapy.

Moreover, such an approach diminishes judicial discretion to weigh the totality of factors (as enumerated in N.J.S. 9:2-4(c)), including stability, existing relationships, and expressive but not determinative assessments of child readiness for therapeutic work.

4. Loss of Judicial Discretion and Case-by-Case Flexibility

For decades, New Jersey courts have applied a best–interest standard informed by a wide range of factors and professional input. The revised S4510/A5761:

- Removes broad judicial authority to order, modify or suspend therapy where appropriate, instead requiring specific conditions before any interventions can occur.
- Over emphasizes the wishes of the child.

This shift redirects custody adjudication from a flexible, professional–led, fact-sensitive process to a rigid checklist of evidentiary and consent requirements. It places legal technicalities ahead of clinical realities and reduces the ability of judges to act in response to nuanced family dynamics.

Conclusion: Reform or Regression?

S4510/A5761 articulates laudable goals—protecting children and ensuring thoughtful custody decisions—but in its current form, it imposes obstacles that may impede reunification in cases of estrangement, reduce therapeutic options, and place undue weight on uncontextualized child preferences. New Jersey families deserve a framework that balances safety, professional guidance, and judicial flexibility, not one that discourages meaningful reunification and elevates litigation tactics over genuine resolution.

Charles F. Vuotto, Jr. *is of counsel in the family law practice group at A.Y. Strauss, LLC with offices in Livingston, NJ and NY.*

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