



Memorandum in Support
S.9778A (Sepulveda)/A.4362B (Rosenthal)

The New York State Trial Lawyers Association (NYSTLA) supports this legislation, which would clarify that public institutions owe a duty of care to foster children in their custody and are liable for their part in negligent placement, including in cases brought under the 2019 Child Victims Act. The Child Victims Act temporarily lifted the statute of limitations for adult survivors of childhood sexual abuse to file a civil suit.

This bill would ensure that victims of child sexual abuse that was caused in part by a public entity's negligence are able to get full accountability. Unfortunately, some NY courts have held that public entities have governmental immunity in cases brought under the Child Victims Act.

Recently, in *Weisbrod-Moore v. Cayuga County*, the Court of Appeals held that "municipalities owe a duty of care to the children the municipalities place in foster homes because the municipalities have assumed custody of those children." The court reasoned that, "While the foster parent has physical custody, the municipality has a continuing and independent responsibility to safeguard the child from foreseeable harm that may result from the foster placement it selected."

This bill would codify *Weisbrod-Moore* and clarify that all public entities, including cities, counties, towns, villages and other municipalities, owe a nondelegable special duty to a child in their legal custody. Such entities would have a duty to provide for the child's safety and to exercise reasonable care in the prevention of foreseeable harm. If the placement or the supervision of a child in a temporary home or residential facility proximately causes injury to such child, this duty would be considered breached, and the public entity would be liable to such child for negligence.

This bill also creates a private right of action for individuals who were harmed by the public entities breach of this duty of care. Such claims would be heard in the Court of Claims. This bill, coupled with the Child Victims Act, will ensure that victims of child sexual abuse can have their day in court and hold **anyone** who caused them harm accountable, including the public entities that failed to protect them.

There should be zero tolerance for endangering a child in New York. It is critically important to ensure any entity responsible for child abuse is held fully accountable. When public entities are forced to answer for their negligence, they raise their standards. This will result in more thorough vetting and safer conditions for foster children.

For these reasons, we urge the Legislature to pass this bill.