SAMPSON
Rpld S516, Fam Ct Act
Repeals section 516 of the family court act which provides for court approval of a written agreement or compromise for child support between a putative father and a mother or person on behalf of the child, which, when so approved, bars other remedies for child support.

STATE OF NEW YORK

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2975

2009-2010 Regular Sessions

IN SENATE

March 9, 2009

Introduced by Sen. SAMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to repeal section 516 of the family court act, relating to agreement or compromise of support in paternity proceedings

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 516 of the family court act is REPEALED.

§ 2. This act shall take effect immediately.

REPEAL NOTE.--Section 516 of the family court act, proposed to be repealed by this act, provides for court approval of a written agreement or compromise for child support between a putative father and a mother or person on behalf of a child, which, when so approved, bars other remedies for child support.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1

BILL NUMBER: S2975

SPONSOR: SAMPSON

TITLE OF BILL:
An act to repeal section 516 of the family court act, relating to agreement or compromise of support in paternity proceedings

PURPOSE OF BILL:
This measure would codify the decisions of the United States District Court in WILLIAMS V. LAMBERT, 902 F.Supp. 460

(S.D.N.Y., 1995), by repealing section 516 of the Family Court Act, which now requires court approval for an agreement between the mother and putative father for the support and education of an out-of-wedlock child. When so approved, that agreement bars other remedies for the support and education of the child.

JUSTIFICATION:
Section 516, enacted in 1962 but derived from the old Domestic Relations Law, served two purposes. First, it encouraged putative fathers to settle paternity claims, thereby reducing the necessity for legal proceedings. The agreement offered the putative father certainty and a limitation on his future support obligation, while the interests of the child and mother were protected by the requirement for judicial review. Second, the statute helped ensure that the child would not be without support from the father. By furnishing an incentive to settle, the statute tended to prevent support of the out-of-wedlock child from becoming lost in the intricacies of the process and the uncertainty of adjudicatory outcome. BACON V. BACON, 46 N.Y.2d 477,480 (1979). This section no longer is needed or justified because of technological advances made in blood genetic marker tests, statutory enactments requiring their use, and the evidentiary weight courts are required to accord their results. Although blood grouping tests had been in use in paternity proceedings for many years, until 1981 they were admissible only for the purposes of excluding the respondent as father. As a result of scientific advances in the field, the Legislature, impressed by the increasing accuracy of the tests, repeatedly amended Section 532 to permit the use of blood tests as positive evidence of paternity as well. The most recent amendments, as well as decisions of the appellate courts and changes in federal law, have accorded weight to test results that is almost tantamount to evidentiary certitude. SEE, L. 1997, c. 398; L.1994, c. 170; Personal Responsibility and Work Opportunity Reconciliation Act of 1996 Pub. Law 104-193; BARBER V. DAVIS, 120 A.D.2d 364 (1st Dept., 1986); NANCY M. G. V. DANN 00, 148 A.D.2d 714 (2nd Dept., 1989); DISCENZA V.

JAMES M., 148 A.D.2d 196 (3rd Dept., 1989). WILLIAMS V. LAMBERT is not the only court decision casting doubt on the constitutionality of this section. In CLARK V. JETER, 486 U.S. 456 (1988), the Supreme Court held that a 6-year statute of limitations for paternity actions violated the equal protection clause in unacceptably differentiating between in-wedlock and out-of-wedlock children. Thereafter, it remanded a Wisconsin case, GERHARDT V. ESTATE OF MOORE, 407 N.W. 2d 895 (1987), JUDG. VACATED, 486 U.S. 1050 (1988), to that state's Supreme Court for further consideration in light of CLARK.ct. That case concerned a Wisconsin statute allowing . defendants in paternity proceedings to enter into settlements whereby they admitted paternity and paid off their child support obligation in one lump sum. Upon reconsideration, the Wisconsin court found that the same principle that rendered the different treatment of children born out-of-wedlock as opposed to marital children unconstitutional in CLARK V. JETER applied to preclude enforcement of a paternity settlement as a bar to a child's subsequent independent action for support. GERHARDT V. ESTATE OF MOORE, 441 N.W. 2d 734 (1989); SEE ALSO STURAK V. OZOMO, _N.W.2d_; 1999 WL 1044243 (Mich. App., Nov. 16, 1999); CREGO V. COLEMAN, 232 Mich. App. 284, 591 N.W.2d 277 (Mich. App., 1999) (statute similar to FCA § 516 violates equal protection). Significantly, New York courts have held that individuals who were not parties to agreements under section 516 could not be deemed to be fore- closed from pursuing child support remedies. The court of appeals held, in ADRIANNA G. V. RUBEN 0.,80 NY2d 409 (1992), that a welfare official, as assignee of the rights of a mother who had signed a section 516 agreement, is permitted to compel payment of child support despite the father's compliance with the court-approved agreement. Holding that the lower court had "failed in its duty to make an independent determination of the best interests of the child," the Supreme Court, Appellate Division, Fourth Department, in MATTER OF MICHELLE W. V. JAMES P., 218 A.D.2d 175,178-9 (4th Dept., 1996), held an agreement under section 516 to be void and against public policy, where it released the obligor from any child support obligations beyond three years. In upholding a challenge by the law guardian, the court stated: Indeed, a contract depriving a child of his rights is not binding upon the child citations omitted. Agreements cannot be upheld where children are treated as chattels and their rights bartered away... Here, the parties have in effect bargained away the birthright of the child. This agreement not only set forth the parental rights and support obligation of respondent, it completely eradicated his parental responsibilities. A parent cannot buy another parent's rights or sell his or her own rights. A contract exchanging parental rights for compensation simply cannot be countenanced by the courts. citation omitted ACCORD. ANDRE V. WARREN, 248 A.D.2d 271 (1st Dept., 1998) (remand for appointment of law guardian and hearing on issue of whether agreement fulfills child's best interests); DEPARTMENT OF PUBLIC AID EX REL COX V. MILLER, 146 HI.2d 399,586 N.E.2d 1251 (S.Ct., III., 1992). Nor does the recent case of CLARA C. V. WILLIAM L., 181 Misc.2d 241 (Fam. Ct., Kings Co., 1999), APP. PENDING, _A.D.2d_ (1999), providing contrary authority since its ruling upholding a section 516 agreement rested in large measure on the fact that one of the parties to the agreement, rather than the child, was challenging its enforcement. Significantly, section 513 of the Family Court Act has been amended to make it clear that in-wedlock and out-of-wedlock children must be treated similarly for the purposes of support, thus ending uncertainty about support awards for out-of-wedlock children. In sum, intervening develop- ments have rendered section 516's compromise procedure unnecessary, likely inimical to a child's best interests, and

constitutionally suspect. Consequently, judges should not be called upon to approve these agreements, and that the section should be repealed.

LEGISLATIVE HISTORY:
New Bill.

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS
NONE.

EFFECTIVE DATE:
Immediately.