

Joint Memorandum in Support

Preserving Family Bonds Act

S4203 (Savino) | A2199 (Joyner)

March 2019

***AN ACT** to amend the Social Services Law and the Family Court Act to allow post-termination visitation and/or contact between children and their birth parents and/or their siblings in a proceeding for the commitment of the guardianship and custody of a child filed pursuant to any cause of action under the Social Services Law or Family Court Act.*

The purpose of the Preserving Family Bonds Act is to grant Family Court judges the discretion at a disposition hearing in a termination of parental rights proceeding to order continued visitation and/or contact between children and their birth parents and/or their siblings after a parent's rights have been terminated when such contact is deemed by the court to be in the children's best interests.

The Preserving Family Bonds Coalition, made up of legal services providers and non-profit organizations that work with child welfare-involved children and families across New York State, calls upon the legislature to pass and the Governor to sign S4203/A2199.

Justification

Research shows that children benefit from strong, healthy family bonds. Under current law, family court judges are not allowed to protect the rights of children to contact or visit with their parents and siblings after parental rights have been terminated, even when the court deems it in the best interest of the children. The Preserving Family Bonds Act provides that, if it is truly in the best interest of the children to stay connected with their families, then judges may allow them to do so, in a manner that is safe and appropriate.

The current law in New York provides for open adoption and post-termination contact when a parent voluntarily surrenders his or her parental rights¹ but does not give courts any authority to allow for contact between children and biological parents after a parent's rights have been terminated.² In the 2012 case *Matter of Hailey ZZ*, the New York Court of Appeals clearly stated that New York family court judges do not have the authority to order post-termination contact between a biological parent and her child, *even when such an order would be in that child's best interest.*³ The Court reasoned that "the Legislature, the entity best suited to balance the critical social policy choices and the delicate issues of family relations involved in such matters, has not sanctioned judicial imposition of post termination contact where parental rights are terminated after a contested proceeding."⁴

S4203/A2199 recognizes the value that post-termination contact between children and biological parents and/or siblings has for many children, especially those that may have strong bonds with their biological family. Specifically, it would provide the Court with the discretion to order contact and communication between the child and the parent, custodian or sibling, subject to the best interests of the child. This contact may include, but is not limited to, supervised or unsupervised visitation,

telephone calls, emails, letters, exchange of pictures, social media, and skype or other forms of video chat.

The bill ensures that parents and children who are parties to the termination proceeding, as well as the child's pre-adoptive foster parents, have standing to participate in the best interest post-termination visitation and/or contact hearing.

While the termination of a parent's right to a child may ultimately be best for that child, a growing body of research has shown that retaining some contact with a biological family or parent may also be in that child's best interest.⁵ Even when a biological parent is unable to care for their child, post-termination contact allows the child to retain a relationship with his or her parent and/or sibling and may allow that biological parent to play a positive role in the child's life. Most children placed in the foster care system already have established significant ties to their biological parents and other family members.⁶ Even children who enter foster care at birth and are ultimately adopted will likely have had regular contact and strong bonds with their biological families for a lengthy time period, even years, prior to the time the parent-child relationship is legally severed.⁷

Children who enter foster care and are eventually adopted can experience long-term emotional consequences stemming from the break-up of the biological family, the disruption in the children's most basic source of security, and the feelings of displacement that follow.⁸ Children who have been adopted may experience insecurity and doubt in future relationships, based on the termination of the biological parent-child relationship.

Post-termination contact, where appropriate, may offer a number of benefits to children who may remain in foster care or transition into an adoptive family. Continued contact after a parent's rights have been terminated, whether voluntarily or involuntarily, allows a child to maintain a social relationship with his or her biological parent and/or siblings. It may also help a child develop a more secure sense of self by offering them the ability to better understand their parents, biological family and what led to the termination of the legal relationship. Post-termination contact may also help a child with the transition that comes after the termination of a parent's rights. This same child has likely already transitioned from their biological family to foster care, and may now be dealing with the transition to their adoptive family. Contact may offer children the opportunity to heal and transition through communication, where appropriate and safe, with their biological parents and come to accept their life story. Especially as children age, they are better equipped to process the emotional burdens of what happened in their families that led to the termination. Biological parents can reinforce with their children, through post-termination contact, that the termination was not the fault of the child and that the parent still loves and cares for the child, even if he or she is unable to parent him or her.⁹

Many adopted children, no matter the process of their adoptions, find themselves curious about their biological parents and their biological ancestry.¹⁰ Satisfying a child's curiosity about where they come from has been directly correlated to a child's well-being. Studies have shown that the more children know about their family histories, even negative family histories, "the lower their anxiety, the higher their self-esteem, the more internally controlled they were, the better their family functioning, the fewer their behavioral problems, and the more cohesive their families."¹¹ Post-termination contact, where appropriate, allows children access to their racial, ethnic, religious and cultural histories, critical in developing sense of self. Contact may also become crucial to them later in life, including the exchange of family medical and health information.¹²

S4203/A2199 will bring New York law in line with the realities of families involved in the child welfare system and will better allow family courts to tailor termination of parental rights (TPR) dispositional orders to meet the needs and best interests of children. The signatories urge the New York legislature to pass and the Governor to sign this important bill, which will improve outcomes for foster and adoptive youth across our State.

SIGNED BY:

**The Bronx Defenders
Brooklyn Defender Services
Brooklyn Law School Disability & Civil Rights Clinic
Center for Family Representation
Chief Defenders Association of New York
Child Welfare Organizing Project
The Children’s Law Center
Coalition for Homeless Youth
Columbia County Public Defender
Covenant House New York
Families, Fathers & Children, Inc.
Hour Children
Lansner & Kubitschek
Lawyers for Children
The Legal Aid Society
Linda Gehron, Esq. (Onondaga County)
Monroe County Conflict Defender’s Office
Monroe County Public Defender’s Office
Neighborhood Defender Service of Harlem
New York State Association of Criminal Defense Lawyers
New York State Defenders Association
New York University Family Defense Clinic
The Osborne Association
Rise Magazine
Sinergia Inc.
St. Lawrence County Conflict Defender's Office
Women’s Prison Association**

¹ Social Services Law § 383.

² *Matter of Hailey ZZ*, 19 N.Y.3d 422 (2012).

³ *Id.*

⁴ *Id.*

⁵ See, e.g., Solangel Maldonado, *Permanency v. Biology: Making the Case for Post-Adoption Contact*, 37 CAP. U. L. REV. 321, 326-28 (2008) (reviewing recent studies); Kirsten Widner, *Continuing the Evolution: Why California Should Amend Family Code Section 8616.5 to Allow Visitation in All Postadoption Contact Agreements*, 44 SAN DIEGO L. REV. 355, 367-68 (2007).

⁶ See Child Welfare Information Gateway, *Foster Care Statistics 2014* 8 (2016), available at <https://www.childwelfare.gov/pubs/factsheets/foster.pdf> (last visited Dec. 2, 2016) (median age of child entering foster care in fiscal year 2014 was 6.4 years).

⁷ U.S. Dep’t of Health and Human Services, Administration for Children and Families, *The AFCARS Report, Preliminary FY 2014 Estimates as of July 2015*, available at <http://www.acf.hhs.gov/sites/default/files/cb/afcarsreport22.pdf> (showing mean time in care for children waiting to be adopted was 32.3 months, with 85% of those children having spent one year or more in care).

⁸ See Sandra Stukes Chipungu & Tricia B. Bent-Goodley, *Meeting the Challenges of Contemporary Foster Care*, 14 FUTURE CHILD 74 (2004), available at https://www.princeton.edu/futureofchildren/publications/docs/14_01_04.pdf.

⁹ Erika Harrison, *Benefits of Post Adoption Contact Agreements*, 31 CHILD. LEGAL RTS. J. 1, 61 (Spring 2011).

¹⁰ See Mark Courtney et al., *Executive Summary, Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 21*, 3 (2007) (“Midwest Study”) (reporting that “[a]lmost all of the young adults in the Midwest Study sample had maintained at least some family ties, and in many cases those ties were quite strong.”); Dawn J. Post & Brian Zimmerman, *The Revolving Doors of Family Court: Confronting Broken Adoptions*, 40 CAP. U. L. REV. 437, 477 (2012), (finding that biological family remained involved in the lives of children in 75% of surveyed cases).

¹¹ Marshal P. Duke et al., *Knowledge of Family History as a Clinically Useful Index of Psychological Well-Being and Prognosis: A Brief Report*, 45 PSYCHOTHERAPY THEORY, RESEARCH, PRACTICE, TRAINING 268 (2008).

¹² Alexis Williams, *Rethinking Social Severance: Post-Termination Contact Between Birth Parents and Children*, 41 CONN. L. REV. 609 (2008).