



Memorandum in Support

NYSBA #18

May 25, 2023

S.6720
A.5394

By: Senator Brisport
By: M of A Joyner

Senate Committee: Passed Senate
Assembly Committee: Judiciary
Effective Date: 180th day after it shall have
become a law.

AN ACT to amend the Family Court Act and the Social Services Law, in relation to establishing procedures regarding orders of post-termination visitation and/or contact between a child and such child's parent.

LAW AND SECTIONS REFERRED TO: §634 of the Family Court Act, §384-b of Social Services Law

NEW YORK STATE BAR ASSOCIATION **SUPPORTS THIS LEGISLATION**

The purpose of the Preserving Family Bonds Act is to grant Family Court judges the discretion to order continued visitation and/or contact between children and their families after a parent's rights are terminated and when such contact is in the children's best interests.

Research shows that children benefit from strong, healthy family bonds, including continued contact with their families after they have been adopted. Yet, 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 are involuntarily terminated, even when the court finds that continued contact would be 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 rights,¹ but deprives courts of the authority to allow for contact between children and biological parents after a parent's rights have been involuntarily terminated.² Yet the difference between a voluntary surrender of parental rights and an involuntary termination by the court is a procedural one; it has nothing to do with the strength of the bond between the parent and their child, or the child's need to maintain some form of contact with their family of origin following adoption.

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

¹ Social Services Law § 383.

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

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 In 2019, the Legislature decided that Family Court judges should have the authority to order post-termination contact, but Governor Cuomo vetoed the bill. The current bill language put forth this year addresses the concerns raised.⁵

The Preserving Family Bonds Act recognizes the value that post-termination contact may have for some children and their families. Specifically, it provides the Court with the discretion to order contact and communication between the child and the parent, 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.

In our experience, most children placed in the foster system have significant ties to their biological families. Even children who enter the foster system at birth, and are ultimately adopted, will likely have had regular contact with their biological families for a lengthy time period, even years, and developed strong bonds with them prior to termination of parental rights. Children who enter the foster system and are then adopted can experience long-term emotional consequences stemming from the break-up of the biological family, the disruption in their most basic source of security, and feelings of displacement that may follow.

While in some cases the termination of a parent's right to a child may be best for that child, a growing body of research has shown that retaining some contact with biological family members may also be in that child's best interest.⁶ 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 other family members, and allows that biological parent to play a positive role in the child's life. Most children placed in foster care have significant ties to their biological parents and other family members.⁷ Even children who enter foster care at birth and are ultimately adopted will likely have had regular contact with their biological families for a lengthy time period, even years, and developed strong bonds with them prior to termination of parental rights.⁸

³ *Id.*

⁴ *Id.*

⁵ Among other changes, the current version of the bill makes it more difficult to establish the need for a modification of a post-termination contact order and carves out exceptions for children fourteen years of age or older who do not consent to contact, and for cases of severe or repeated abuse, so that post-termination contact cannot be ordered in such cases, unless the party seeking such contact was not the perpetrator of the abuse.

⁶ 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).

⁷ 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 infiscal year 2014 was 6.4 years).

⁸ 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 incare for children waiting to be adopted was 32.3 months, with 85% of those children having spent one year or more in care).

The Preserving Family Bonds Act is particularly vital given the racially disparate impact of the family regulation system. Also known as the child welfare system, this system disproportionately separates Black and Latiné families. In the state of New York, Black children make up 44% of the foster system population but only 15% of the general child population. When parents are unable to complete programming required to reunify with their children because they are unable to find transportation, housing or employment; suffer with mental health issues or substance use; or have an intellectual disability and lack support; or simply are unable to navigate the complex web of services and programming required by agencies or the court – the State begins the process of terminating their rights. Given the current law, parents in this challenging circumstance are forced to surrender their parental rights in order to continue their meaningful relationship their children.

This bill allows any party to the termination of parental rights proceeding, including the child, to make an application for post-termination contact. Unless all parties consent, the bill provides that the Family Court may order post-termination contact only after a full evidentiary hearing at which the birth parents, the foster care agency, the child’s foster caretakers, and the child will have standing to participate. The party seeking an order for post-termination contact will have the burden of establishing that such contact would be in the best interests of the child. They would also be required to establish that any party objecting to the order does not have a reasonable basis for doing so.

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.⁹ 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 can offer many 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 their parent. 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 their 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 the foster system and may now be dealing with the transition to their adoptive family. Contact may offer children the opportunity to ease this transition through communication with their biological parents and siblings. Contact with siblings who have a shared experience of family may help children maintain stability. Especially as children age, post-termination contact better equips them 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.¹⁰

Many adopted children, regardless of how they were adopted, find themselves curious about their

⁹ 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.

¹⁰ Erika Harrison, *Benefits of Post Adoption Contact Agreements*, 31 CHILD. LEGAL RTS. J. 1, 61 (Spring 2011).

biological parents and their biological ancestry.¹¹ 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.”¹² 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.¹³

In recognition of the research described above, the federal government’s latest guidance regarding state efforts to obtain permanency for children in foster care, issued in January 2021, placed significant emphasis on the importance of maintaining children’s ties to their families and communities of origin.¹⁴ Specifically, the guidance made clear that in the vast majority of families, “adoption should be viewed as an opportunity to expand a child’s experience of family rather than replace their previous family,”¹⁵ and that children’s relationships with their biological parents, siblings, and extended family members should continue even after termination of parental rights and adoption. “Children do not need to have previous attachments severed in order to form new ones. In fact, they will be better positioned to develop new relationships if we work to preserve their original connections, sparing them from additional grief and loss.”¹⁶

The Preserving Family Bonds Act will allow New York law to better address the realities and needs of families involved in the child welfare system and will allow family courts to better tailor dispositional orders in termination of parental rights proceedings to meet the needs and best interests of children. The signatories urge the New York Legislature to once again pass and the Governor to sign this important bill, which will improve outcomes for foster and adoptive youth across our State. Children deserve more love in their lives, not less.

For the reasons stated above, the New York State Bar Association **SUPPORTS** this legislation.

¹¹ 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).

¹² 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).

¹³ Alexis Williams, *Rethinking Social Severance: Post-Termination Contact Between Birth Parents and Children*, 41 CONN. L. REV. 609 (2008).

¹⁴ U.S. Dep’t of Health & Hum. Servs, Admin. for Children & Families, Children’s Bureau, *Achieving Permanency for the Well-Being of Children & Youth*, ACFY-CB-IM-21-01 (Jan. 5, 2021).

¹⁵ *Id.* at p. 18.

¹⁶ *Id.* at p. 12.