



NEW YORK
CITY BAR

**REPORT ON LEGISLATION BY THE CHILDREN AND
THE LAW COMMITTEE, COUNCIL ON CHILDREN,
AND FAMILY COURT AND FAMILY LAW COMMITTEE**

**A.5394
S.6720**

**M. of A. Joyner
Sen. Brisport**

The Preserving Family Bonds Act

AN ACT to establish procedures regarding orders of post-termination visitation and/or contact between a child and such child's parent and for modification of such orders.

THIS BILL IS APPROVED

On behalf of the New York City Bar Association, we are writing to express our support for the Preserving Family Bonds Act, which would give Family Court judges the discretion to order continued contact between children and their families of origin after a parent's rights are terminated. This bill is grounded in research and the growing understanding, both locally and nationwide, that openness in adoption plays an important role in the well-being of many adopted children and their families. As such, we firmly believe that this bill protects the rights and interests of New York State children in foster care and can play a critical role in helping to achieve permanency for them.¹

I. New York Law Currently Allows Post-Adoption Contact for Some Children

The current law in New York allows open adoption and post-termination contact when parents voluntarily surrender their parental rights but deprives courts of the authority to allow for contact between children and their biological parents after a parent's rights have been involuntarily terminated. This procedural distinction should not determine whether and how children have ongoing contact with their families of origin. Moreover, while this procedural framework presents something of a Hobson's choice to parents who place the highest premium on being able to maintain contact with their children, it fails to take the child's position into account at all.

¹ The predecessor version of this Bill (A.6700 / S.6357) passed both houses of the Legislature but was subsequently vetoed in 2021. We urge the Governor to reconsider the Bill and, for the reasons set forth below, believe the Bill fully addresses the concerns articulated in the Governor's veto memorandum.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has over 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

Children placed in foster care may have significant ties to their biological families. Even children who enter foster care at birth and are ultimately adopted may have had regular contact with their biological families for a lengthy time period and developed strong bonds with them prior to termination of parental rights (TPR). 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 feelings of displacement that may follow.

II. Post-Termination Contact is Not a New Concept in New York

For many years, New York State judges in the Second and Fourth Appellate Division Departments were authorized to order post-TPR contact pursuant to case law. In June 2012, that practice changed after the Court of Appeals held in *Matter of Hailey ZZ* that judges did not have the explicit authority to grant post-TPR contact.

As a result of the *Hailey ZZ* decision, parents risk losing all contact with their children if they choose to defend their rights in a termination of parental rights proceeding and lose. Parents are often coerced into surrendering their rights in order to maintain some level of contact and an open relationship with their children, even if they have a strong case to make that their rights should not be terminated.

The Court of Appeals made clear that the legislature must act for judges to have the authority to order post-TPR contact where continued visitation is in the child's best interest.

III. The Preserving Family Bonds Act is Narrowly Tailored

The Preserving Family Bonds Act has been narrowly tailored to give Family Court judges the authority to order post-termination contact between children and biological parents, in limited circumstances. Procedurally, the bill amends the Social Services Law to allow a Family Court judge to hear a one-time application for post-termination contact at the dispositional stage of a termination proceeding. Where there is not consent among the parties, the court will hold a hearing to determine if consent is being unreasonably withheld, with the burden of proving unreasonableness on the party seeking post-termination contact. Only if the court agrees that consent is being unreasonably withheld will it determine whether post-termination contact is in the best interests of the child.

The subject child's foster parents must be given notice of such an application and have standing to participate in the hearing. Where the subject child is over the age of 14, their consent is required. The bill also permits any party to the hearing and any subsequent guardians or adoptive parents to seek to enforce or modify the order of post-termination contact; modification may be granted where the moving party has established: (1) a substantial change in circumstances; (2) that the modification would be in the best interests of the child; and (3) that any party objecting to the modification does not have a reasonable basis for doing so.

Finally, it should be noted that concern has been raised that adoptive parents would not have the right to assigned counsel in these hearings. This simply is not true. Pursuant to Family

Court Act § 262(a)(iv), the parent or any person having physical or legal custody of a child has the right to assigned counsel in any proceeding pursuant to Social Services Law § 384-b. That provision governs both the initial hearing for post-termination contact and any subsequent hearing for violation or modification. As the person having physical custody of the child prior to the adoption and having legal custody of the child after the adoption is finalized, the adoptive parent is entitled to assigned counsel at all stages of the proceedings.

IV. This Bill Will Bring NYS in Line with Prevailing Research on Adoption

A growing body of research shows that retaining contact with biological family members may be in a child’s best interests. 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 family and allows a biological parent to play a positive role in the child’s life. It can help a child develop a more secure sense of self by offering them the ability to better understand their biological family and what led to the termination of their legal relationship. Biological parents can reinforce that the termination was not the fault of the child and that the parent still loves and cares for the child, even if they are unable to parent him or her. Post-termination contact allows children access to their racial, ethnic, religious and cultural histories, which can be critical in developing a sense of self.

The Act is consistent with the federal government’s latest guidance regarding state efforts to obtain permanency for children in foster care, issued in January 2021, which placed significant emphasis on the importance of maintaining children’s ties to their families and communities of origin.² 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,” 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.”

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. The Act will allow family courts to tailor dispositional orders in termination of parental rights proceedings to meet the needs and best interests of children. Where the foster parents do not consent to post-termination contact, and the judge determines that they have a reasonable basis for withholding consent, the contact will *not* be ordered. We urge the Governor to sign this important bill, which will improve outcomes for foster and adoptive youth across our State.

Thank you for considering our position on this important proposal impacting New York’s children and families.

² See <https://www.cwla.org/wp-content/uploads/2021/01/ACYF-CB-IM-20-09.pdf>. (Last accessed on July 10, 2023).

Children and the Law Committee
Christina Rich and Amy Hozer-Weber, Co-Chairs

Council on Children
Cathy Cramer, Chair

Family Law and Family Court Committee
Michael A. Weinstein and TuoZhi Zhen, Co-Chairs

Reissued November 2023*

Contact

Maria Cilenti, Senior Policy Counsel | 212.382.6655 | mcilenti@nycbar.org

Mary Margulis-Ohnuma, Policy Counsel | 212.382.6767 | mmargulis-ohnuma@nycbar.org