

Memorandum in Support

COMMITTEE ON CHILDREN AND THE LAW

Children #7

May 20, 2019

S. 4203

By: Senator Savino

A. 2199

By: M. of A. Joyner

Senate Committee: Children and Families

Assembly Committee: Codes

Effective Date: 30th day after it shall have become a law.

AN ACT to amend the family court act and the social services law, in relation to orders committing guardianship and custody of a child.

LAW AND SECTIONS REFERRED TO: Section 634 of the Family Court Act and section 384-b of the Social Services Law

THE COMMITTEE ON CHILDREN AND THE LAW SUPPORTS THIS LEGISLATION

The Committee on Children and the Law includes child advocates, parent advocates, government employees and others who work in the child welfare field. The Committee supports amending the Social Services Law to authorize Family Court judges to continue visitation or contact between children and parents or siblings following termination of parental rights, when visitation or contact is in the best interests of the child.

Under current law, New York courts do not have any authority to direct continued visitation or contact between a child and a parent after parental rights are terminated, except in the case of voluntary surrender. Termination of parental rights proceedings are highly fact-specific, and a range of circumstances can lead to termination based on abandonment, mental illness, intellectual disability or permanent neglect. Even when a parent is not able to care for a child, in some cases the complete termination of all forms of parental contact can have a harmful impact on the child's wellbeing, particularly if the child wishes to maintain some form of contact with the parent. There is a disproportionate impact on minority children and families, in light of disproportionate minority representation in the child welfare system.¹ Furthermore, in practice some

¹ See, e.g., Vajeera Dorabawila & Nicole D'Anna, New York State Office of Children and Family Services, Disproportionate Minority Representation (DMR) in Child Welfare and Juvenile Justice Systems (December 2015), https://ocfs.ny.gov/main/bcm/DMR_Section%20Seven%20of%20Grant%20RFP_2015.pdf.

children maintain contact with their parents without any involvement or supervision by the court, whether in person or through social media or other forms of communication.²

This bill would provide a mechanism for a party to a termination of parental rights proceeding to seek post-termination visitation or contact. Post-termination visitation or contact between a child and a parent or sibling could be ordered if the Family Court determines it is in the best interests of the child. Visitation or contact could take different forms (for example, in-person, telephone, or social media), depending on what is in the child's best interests. The Family Court would also have discretion to determine the level of supervision for any visitation or contact, considering the best interests of the child.

The bill includes appropriate procedural protections to ensure that the child's interests are heard, whether the child supports or opposes visitation or contact. The child has an opportunity to participate in a post-termination visitation and/or contact hearing, along with the child's parents, other children who are parties to the proceeding, and the child's foster parents. Furthermore, if a post-termination visitation or contact order is entered, modification or enforcement may be sought by any party to the order, and any subsequent legal guardian, custodian or adoptive parent for the child. The Court may modify or enforce a post-termination contact or visitation order "based on a showing of good cause and the best interests of the child."

Based on the foregoing, the NYSBA's Committee on Children and the Law **SUPPORTS** this legislation.

² See Dawn J. Post & Brian Zimmerman, *The Revolving Doors of Family Court: Confronting Broken Adoptions*, 40 Cap. U. L. Rev. 437, 477-78 (2012).