



New York State Defenders Association, Inc.

Public Defense Backup Center

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MEMORANDUM IN SUPPORT **The Preserving Family Bonds Act** **A.4940 (Tapia) & S.5240 (Brisport)**

The New York State Defenders Association (NYSDA) strongly supports the “Preserving Family Bonds Act,” (A.4940/S.5240), which will grant family court judges the discretion to order continued visitation and/or contact between children and their families of origin after a parent’s rights are terminated when such contact is in the *children’s best interests*. This would cure a defect in the current law that allows for open adoption and post-termination contact when parents voluntarily surrender their parental rights but does not allow the same authority to order contact after parental rights have been involuntarily terminated. This transformational piece of legislation can potentially change the lives of families who have been made legal strangers due to a Termination of Parental Rights proceeding.

NYSDA, through our Public Defense Backup Center and Veterans Defense Program, provides comprehensive services to the approximately 6,000 public defenders, legal aid society lawyers, and court-appointed attorneys in over 130 county-based programs who represent people accused of crime and adults involved in family court cases who cannot afford to hire an attorney. We offer training, legal research, a statewide clearinghouse, and substantial technical and legal assistance critical to the effectiveness of overburdened defenders and vital for improving racial and social justice.

The Preserving Family Bonds Act would finally give judges the long overdue discretion to allow children to have contact with their biological parents and siblings post-termination. Research shows that retaining contact with biological family members may be in a child’s best interest. Even when a biological parent cannot care for their child, post-termination contact allows the child to retain a relationship with their family and allows a biological parent to play a positive role in the child’s life. This 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 to their children 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 them. Post-termination contact also allows children access to their medical, racial, ethnic, religious, and cultural histories, which is critical to developing a sense of self.

Family separation is a racial justice issue. In recent years, there has been much attention given in the media to the huge racial disparities and systemic bias in the criminal justice system, but much less attention has been given to the racism that runs rampant through the child welfare system. The stark reality is that the breadth of Child Protective Services’ (CPS) reach is particularly targeted towards people of color. In New York, Black children make up approximately 16% of the general population, and yet they are nearly 50% of the youth in the foster care population.

First, these parents face the trauma of having their children removed, often for reasons that would rarely implicate a family with means or those that are white and come from affluent areas. Then, poor and under-resourced parents are saddled with many onerous and unrealistic orders. Often times,

they are simultaneously forced to choose between voluntarily surrendering their children – with the promise of minimal future contact – or going to trial to fight against termination of their parental rights. If they lose at trial, they then become legal strangers to their children, with no contact and no recourse under the current law. This is effectively telling parents that if they exercise their right to go to trial, they may never see their children again. This is a horrible and unfair choice for any parent as well as a traumatic experience with lifelong implications for both parent and child.

Instead, if the **Preserving Family Bonds Act** becomes law, the family court will have the discretion to determine whether post-adoption contact between a child, their parents, and their siblings is in the best interests of the child. This is exactly the *same standard* used for every custody and visitation case that comes before the court. There are circumstances where contact with a parent is not viable, nor is it in the child's best interests. The court should have discretion to make those hard choices; judges are well equipped and tasked with making those difficult decisions every day.

The Act is consistent with the [federal government's 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. 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."

Enacting this bill is a small first step toward allowing children to connect with their families and their roots, and consequently their sense of self. We respectfully request that you pass this important legislation into law as soon as possible. Regardless of the law, there are some bonds that can never be severed, including that of a child and birth family. It is long past time that the laws in New York recognize that reality.

For all these reasons, NYSDA calls on the legislature to immediately pass A.4940/S.5240.

Contact Susan C. Bryant 518-465-3524 x 26, sbryant@nysda.org (March 24, 2025)