

# The Preserving Family Bonds Act

A10603 (Joyner)

## Frequently Asked Questions



### What is the Preserving Family Bonds Act?

Many children experience untold trauma when they are torn from their parents and placed into the foster system. For many children in the system, the right to regular visits with their parents – many of whom are fighting to bring their children home – is a vital source of love, stability, and healing. Yet, when parental rights are terminated, children may be abruptly denied the right to stay in contact with their parents.

The Preserving Family Bonds Act (PFB) aims to give judges discretion to order continued contact between children and their families of origin after termination of parental rights when – and only when – such contact is in the children’s best interests. This law will allow New York family courts to better address the realities of families involved in the foster system and better meet the unique needs of individual children.

### How does this legislation address prior concerns?

Over the years, this bill has been modified to address the concerns raised by elected officials and stakeholders. Today, the bill has broad support from impacted young people and birth parents, attorneys for children, parent defenders, and other advocates.

#### 1) PFB allows for agreement.

- This bill includes a provision making it clear that an order of post-termination visitation and/or contact can be entered when the parties all consent. Nothing in this legislation prohibits or discourages agreement and orders on consent.

#### 2) PFB places an increased burden on the party seeking an order of post-termination visitation and/or contact.

- In addition to establishing that the order sought would be in the child’s best interests, the applicant must also establish that the party opposing the order does not have a reasonable basis for their failure to consent.
- This latter requirement is based on caselaw interpreting section 72 of the Domestic Relations Law, which allows a court to order visitation between a grandparent and their grandchild over the objection of the child’s parent and which was held to be constitutional by the Court of Appeals in *People ex rel. Sibley on Behalf of Sheppard v. Sheppard*, 54 N.Y.2d 320 (1981).

### 3) PFB allows for reasonable exceptions.

- The consent of children fourteen years or older is required for a Court to make any order regarding post-termination contact. In cases involving severe or repeated abuse, post-termination contact cannot be ordered unless the Court has determined that the parent seeking such contact was not the perpetrator of the abuse.

### 4) PFB does not lead to increased litigation nor delay permanency.

- Once a determination against post-termination contact is made during the existing dispositional hearing (or when a dispositional would be held), the legislation does not allow for this application to be made again.
- The legislation includes an updated modification provision that requires the party seeking to modify the post-termination contact order to establish (1) a substantial change in circumstances justifying such a modification; (2) that the modification is in the child's best interests; and (3) that any party opposing such a modification does not have a reasonable basis for their failure to consent. This latter requirement is also based on the caselaw regarding D.R.L. § 72, which was held to be constitutional by the Court of Appeals.
- This legislation also specifies that an appeal from any order regarding the application for post-termination visitation and/or contact shall not provide a basis for delaying finalization of a child's adoption.

## Why is the Preserving Family Bonds Act important?

**This is a children's bill.** Studies show that children in the system, including those who are ultimately adopted, fare better when they are able to stay in contact with their parents. This bill recognizes that a child's best interests should always be at the heart of the decision to preserve family bonds.

**This is a family bill.** There is no one-size-fits-all solution for families. Each and every family possesses a unique set of needs. This bill allows for this reality to be reflected in judges' decisions.

**This is an autonomy bill.** The threat of permanently losing contact with their children associated with going to trial coerces many parents into giving up their rights in exchange for the opportunity to negotiate for contact with their children. This bill enables parents to make decisions based on what is best for their children while still preserving family bonds.

**This is a racial justice bill.** Black and Latine families bear the brunt of flawed and traumatic outcomes in Family Court. In New York, Black children make up 44% of the foster system population but only 15% of the general child population. This bill allows children to preserve their family bonds as they navigate this discriminatory system.

Contact Nila Natarajan ([nnatarajan@bds.org](mailto:nnatarajan@bds.org)) with further questions.