New York
Public Welfare Association, Inc.

Founded in 1869

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MEMO IN OPPOSITION
A.2199 (Joyner)/S.4203 (Savino)

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

The New York Public Welfare Association (NYPWA) **STRONGLY OPPOSES** A.2199/S.4203. This bill undermines the legal and moral obligation to provide our foster children with permanent homes. It would create endless litigation and childhood-long involvement with Family Court for those foster children who most desperately need the permanency of adoption and an end to ongoing court action in their lives.

Current law already allows for post termination and post adoption visitation rights for grandparents and for siblings and half siblings [Domestic Relations Law §§ 71 and 72, Court of Appeals decision **People ex rel. Sibley v Shepard** 54 NY2d 329 (1981)]. The rights of siblings and half siblings to ongoing post adoption visitation can already be included and enforced in negotiated surrenders [Social Services Law § 383-c(2)(b)]. This bill would only affect the court's authority regarding orders for birth parents. It would result in circumstances that would delay permanency for a child for years—or forever.

The NYPWA is the professional organization of local departments of social services, whose responsibilities include seeking—through the court process—legal permanency for children who are in foster care. This legal process can take many years when it involves children who cannot return safely to the care of their birth parents and must be freed for adoption. This legislation would dramatically exacerbate a very serious problem the state has in obtaining permanent homes for foster children.

When a child is in foster care for 15 out of the most recent 22 months, and it is not possible to safely return the child to the birth parent, federal and state law **require** that the local district begin legal proceedings to terminate parental rights and free the child for adoption. This requirement is crucial for children to achieve, on a timely basis, the legal and emotional permanency of a "forever family."

New York State is currently ranked as one of the lowest in the country in complying with the mandate to achieve timely permanency for children who need to be freed and adopted. The federal government has required the state to set up a program improvement plan to try to resolve this issue. The single most significant cause of this problem is court delays. Even after a termination proceeding is filed in the New York State Family Courts, it will often take multiple years before the child is freed for adoption. This is because it takes local Family Courts many months to hold the required hearings, and it can take Appellate Courts over a year to resolve any appeal of the matter. It is common for the entire legal process to take two years or more—often far longer than the time that the child was in care before the termination legal matter was filed. By comparison, other states have specific mandated timeframes for when Art. 10 proceedings must be finished and for when TPR hearings are held.

A common alternative when a termination petition is filed is for all the parties to agree that the birth parents will surrender the child with some conditions—usually including some limited and safe contact between the parents and the child after the child is adopted. In fact, the majority of terminations in this state are resolved in this way. When this happens, it can substantially reduce the amount of time it takes for the child to be freed and adopted—to leave foster care and achieve a permanent home. Current law clearly requires that this agreement for ongoing contact can only be made with the specific consent of all the parties—including the child's lawyer AND the prospective adoptive parents. The court must also agree that the ongoing contact is in the child's best interests, but the court cannot order the ongoing contact over any party's objections. This negotiation allows everyone to weigh the significance and safety of the contact and, very importantly, assures that the child's new adoptive family is in willing agreement with the terms and supports them as being in the child's best interests.

Current law provides for enforcement of these negotiated terms after the adoption, also based on the child's ongoing best interests. This process ensures that the child will be adopted—often years sooner than if the termination were litigated. The incentive for birth parents to use this expedient alternative would be eliminated if this bill is passed. If it became law, an attorney for a birth parent would recommend litigation of the termination with the hope of getting the court to order more post adoption contact, as well as to allow for ongoing visitation during the years of litigation. This would result in years of court actions instead of permanency for foster children who cannot ever be safely returned to their birth parents.

The most serious negative consequence of this bill would be the persistent involvement of the court in the child's life, even after the adoption, lasting an entire childhood. Giving the court the authority to order post adoption contact gives the birth parent the ability to repeatedly bring the matter back into court—with no limitation of any kind — to seek more visits (or a change in the type of visits), or any issues that the birth parent wants to continue to litigate. The parents in these situations include those for whom rational decisions regarding the appropriateness (and likelihood of success) of such litigation may not be obvious. This is the ultimate lack of permanency for a child and the reason why **many foster families will simply not be willing to adopt a child for whom the court can, on an ongoing basis, continue to modify and increase ongoing visits to birth families**. These foster parents see the desperate need for the child to be raised in a permanent family who can operate like a family—and whose life does not revolve around court proceedings that dictate relationships. Permanency should mean judges and lawyers no longer control your family life.

This bill would result in the possibility of constant court involvement in the adoptive family's life and repeated trauma for the child. It also comes at an incredible cost to the adoptive family who will need to hire an attorney every time a birth parent—who would often receive a free attorney—chooses to bring the matter back to the court. The problems that a birth parent has that result in a termination of their parental rights by the court include such things as mental limitations to such an extent that they cannot ever care for their child, ongoing abuse of drugs even after years of being offered rehabilitation services, or sexual abuse findings that the parent continues to deny. These are exactly the problems that will result in birth parents continuing to bring ongoing litigation regarding any court ordered post adoption contact. **To pass this bill is to subject all of these foster children to the clear possibility that no one will adopt them or that their entire childhood will be spent in endless loops of visitation litigation.**

The local social services districts in the Fourth Department of the Appellate Division—including Erie, Monroe and Onondaga Counties—had to live with the circumstances of this proposed bill for six years before the Court of Appeals issued a decision [**Matter of Hailey ZZ**, 19 NY3d 422 (2012)] that put a stop to it. In 2006, the Appellate Division in the Fourth Department ruled [**Matter of Kahlil S**, 35 AD3d 1164 (4th Dept. 2006)] that Family Court Judges could order post termination contact after full hearings on the termination and over the objections of any party. This ruling resulted in massive delays in permanency for foster children all over the western part of the state—resulting in some of the statistics of delayed permanency the federal government is criticizing us for now. The other Appellate Divisions did not all agree with the Fourth Department—notably the Third Department, whose opinion that such authority was unauthorized was affirmed by the Court of Appeals in Hailey ZZ.

This bill attempts to reverse the Court of Appeals. It would result in what occurred in the Fourth Department courts for six years while the issue of court-ordered post termination contact was litigated in the Appellate Courts. During that period, parent's counsel would refuse to negotiate terms for surrender but would go forward with years long litigated termination hearings, hoping to get different visitation terms from the court as well as just simply stalling the possible termination of the parent's rights. Frequently, the parent's attorney would try to force more visitation in a negotiated surrender than was in the child's best interests by threatening to tie up the child's permanency with years of litigation. The Court of Appeals put an end to that.

For all of the reasons provided, the NYPWA **STRONGLY** recommends that the Legislature **OPPOSE** this bill.

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