

Commentary: Preserving Family Bonds Act holds children hostage

By James Montagnino July 24, 2019

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The screenshot shows the top of a web browser displaying the Albany Times Union website. The article title is "Commentary: Preserving Family Bonds Act holds children hostage" by James Montagnino, published on July 24, 2019. The article features a photo of Governor Cuomo and a protest sign that reads "PLEASE STOP DON'T SIGN THAT BILL! #VETO 54003A A2199A THE PRESERVING FAMILY BONDS ACT".



The governor was presented with a bill, recently passed by the Senate and the Assembly, that bears the heartwarming but deceptive name of the "Preserving Family Bonds Act." The bill would amend the law to allow parents whose parental rights have been terminated due to proven abuse, permanent neglect or abandonment of their children to obtain court-ordered visitation or

other contact with those children even after they have been freed for adoption. This bill will not preserve family bonds. It will, instead, have a significant and negative impact on the lives of children waiting to be adopted and on the foster parents eagerly awaiting adoption.



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Under current law, the termination of parental rights is exactly what the name implies: the cutting off of all parental rights after a judge has heard evidence proving that the parent abused, abandoned or permanently neglected the subject child. Parental rights are not terminated lightly. Usually, the child will have been in the foster care system for about two years before the process is even begun. The new legislation, though, would essentially prevent the termination of parental rights; it would only allow for the termination of parental responsibilities. The parent who was found, on clear and convincing evidence, to have abandoned, abused or permanently neglected the child would be absolved of all liability for child support, day care costs or medical expenses, yet that parent would still enjoy the right to petition for an order of visitation or other contact with the child.

If the biological parent is incarcerated, adoptive parents may be forced to drive their child for hours to a prison facility for visitation with the incarcerated former parent. If the adoptive parents wish to move to a better neighborhood or school district, this could be opposed by the former parent if this should impact on their visitation rights.

A child who has spent years in the foster care system and who deserves permanency and stability will have neither. The child will be left wondering, "Who are my real parents?" "Will I be taken away from my

family and friends and classmates to return to an abusive household?" "Is my adoption just another temporary placement?"

Even if the judge who orders the child freed for adoption should deny the former parent any access, this would not end the uncertainty. The bill provides that the former parent will continue to have legal standing to seek modification of the order at any time in the future. Whether or not the former parent is successful, the adoptive parents will need to retain an attorney at their own expense, while the former parent will likely have counsel assigned on the taxpayers' dime. An attorney will be appointed for the child, who will then be dragged into the continuing litigation with all its attendant stresses.

Beyond the question of legal fees, how many days will the adoptive parents need to take off from work to make successive appearances in Family Court? How many months, if not years, will it take for the former parent's petition to be decided? Even if the adoptive parents are successful at any round of litigation, how long will it be before the former parent files another petition in Family Court?

New York has already been ranked 48th of the 50 states in finding permanent homes for children who are in the foster care system for more than two years. This new legislation will only make it more difficult for at-risk children in foster care to find adoptive parents. Gov. Andrew Cuomo should veto this bill.

James Montagnino of Saratoga Springs is an attorney with more than 30 years' experience who works in the New York Family Courts.

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