

A Fight To Extend Parents' Rights

Foster children with parents in prison are often put up for adoption. The State Senate takes up a bill aimed at slowing that practice.

By Abigail Kramer
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Chrystal Reddick has been clean and sober for one year, nine months and eight days. In that time, she says, she's submitted to at least 15 drug tests (all negative), taken three different kinds of parenting classes and missed just one visit with her 7-year-old son, who was placed in a foster home when Reddick was arrested for using a stolen credit card, three years ago.

In a few weeks, all of those numbers may be rendered meaningless: Though she holds a job, has an apartment and has never stopped fighting to get back custody of her son, Reddick has run afoul of a child welfare law that, according to its opponents, puts parents who spend time in jail, prison or residential drug treatment programs at unfair risk of losing legal rights to their kids – even when there's little to indicate that they won't provide a good home in the future.

The law is called the Adoption and Safe Families Act, or ASFA. Under its dictates, when a child has been in foster care for 15 of the most recent 22 months, welfare workers are compelled to file for termination of the parent's rights, starting a process that cuts contact between parent and child and – in theory, at least – sets the child on a path to adoption. The agencies can make exceptions in cases where there's a “compelling reason” that termination isn't in the child's best interest, but that usually requires a parent to prove that he or she has maintained a strong relationship with the kids.

Critics of the law say that burden of proof is simply unrealistic for incarcerated parents, whose ability to keep in contact with their children rests on the mercy of potentially unsympathetic prison guards and usually overworked social workers, to say nothing of foster care providers who may be reluctant to facilitate the logistical, bureaucratic and emotional ordeals of a visit to prison. Too often, say ASFA critics, families who would be better off together fall into a bureaucratic Bermuda Triangle where the child welfare and criminal justice systems meet. If they can't get out, parents stand to lose the right even to seek information about their children – they may never find out where their kids are, how they're doing, or whether they've been adopted.

In New York, that may be about to change. Last month, the state Assembly unanimously passed the ASFA Expanded Discretion bill, which would end the compulsory nature of the 15-month time limit for kids who land in foster care because a parent is incarcerated or enrolled in a residential drug treatment program. The bill's advocates say that the goal is to allow child welfare workers to make decisions on a case-by-case basis: They could still file for termination of parental rights if there were a good reason to do so, but families wouldn't be broken apart solely because a parent is in prison.

State Senator Velmanette Montgomery, chair of the Senate's Children and Families Committee, has championed the change with legislation in the Senate.

“I sponsored this bill to give families separated by the criminal justice and child welfare systems the fighting chance they deserve to rebuild and stay whole,” Montgomery said. “For too long, we've failed to protect the true best interests of children in foster care with parents in prison and treatment programs.”

The bill has two dozen cosponsors in the senate, including nearly all of the Democratic leadership, and it's backed by a long list of leaders in the state's child welfare community, both within government and without. Gladys Carrion, Commissioner of the New York Office of Children and Family Services, spoke out for the bill at a press conference on Feb. 23. The Advisory Board of the Governor's Children's Cabinet has issued a statement of support, as have the Children's Defense Fund, Big Brothers and Big Sisters of NYC and the Federation of Protestant Welfare Agencies, which wrote in a statement, “Family bonds are too important to impose this harsh an action on children and families who could, if given the opportunity, stabilize and flourish.”

Some key players don't see it that way: Mayor Bloomberg's office, the New York Public Welfare Association and the city's Administration for Children's Services have come out against the Expanded Discretion bill, citing the same concern that inspired ASFA laws in the first place: Kids deserve permanent homes. If their biological parents can't give them one, then they should be freed for other options.

“We believe this legislation is unnecessary because it creates a special category for children of incarcerated parents and parents in a residential drug treatment program,” ACS Commissioner John Mattingly said via e-mail. “We would rather focus on ensuring that all young people in care have the same options for permanency.”

The bill could go to vote in the Senate as March begins. Should it pass, signing by Gov. Paterson is anticipated by supporters.