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# LEGISLATIVE GAZETTE

## Prison moms want more leeway in parental rights cases Bill sponsor hopeful Senate passage is near

[By Faith Burkins-Gimzek](#)

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The Senate seems poised to pass legislation this month that supporters say would help keep intact families separated by the criminal justice and child welfare systems.

Lawmakers, Office of Children and Family Services Commissioner Gladys Carrion and imprisoned women's rights advocates rallied outside the Senate Chamber Feb. 23 to support the Adoption and Safe Families Act Expanded Discretion Bill (S.2233-a/A.5462-a).

"I really am happy to be able to say to you that this legislation will definitely be passing in our house this session," said Sen. Velmanette Montgomery, chair of the Children and Families Committee and the bill's sponsor in the chamber.

"It will give families the fighting chance that they deserve to work towards rebuilding, to work towards keeping connections," said Tamar Kraft-Stolar, director of the Women in Prison Project for the Correctional Association of New York, which coordinated the Feb. 23 news conference. The Correctional Association has made passing this legislation one of its top priorities in its policy agenda for this year.

The Expanded Discretion bill would amend the Adoption and Safe Families Act, a federal law enacted in New York in 1999, which requires, with limited exceptions, foster care agencies to file a petition to terminate parental rights if a child has been in foster care for 15 of the previous 22 months.

Since a woman's median sentence in New York is 36 months, advocates of the bill say a majority of mothers are forced to give up their parental rights, often against the best interest of the child.

The bill has passed unanimously for two consecutive years in the Assembly and has now advanced to its third reading in the Senate.



Assembly Corrections Committee Chairman Jeffrion Aubry emphasizes the importance of family as an incentive and support system for both parents who go to prison and their children. He is sponsoring a bill aimed at keeping families together when a member is incarcerated.

[Photo by Smita Bhooplapur](#)

It reached the Senate floor last session, but was never voted on because of the Senate coup last June.

The proposed legislation would increase a foster care agency's discretion in choosing whether to terminate parental rights and would give agencies the option of taking more time before filing termination of parental rights papers. The bill would also require courts to take into consideration the extenuating circumstances of a parent in the criminal justice system, making it easier for parents incarcerated or in residential substance abuse treatment to retain guardianship and custody of their children.

"[Current law] doesn't reflect the realities of the case and the time needed when the criminal justice system is involved," said Kraft-Stolar. She said there are, as the law stands, exceptions to the 15-month rule, but the exceptions are insufficient.

In the existing law's language, a foster care agency can delay filing termination papers if a child is placed with another family member, if the agency hadn't fulfilled its legal requirements to pursue reunification or if there is a "compelling reason" why it would not be in the best interest of the child to terminate parental rights. "There is some wiggle room ... but not enough," Kraft-Stolar said.

According to the bill's justification, "In appropriate circumstances, caseworkers would have more time to work toward reunification or other permanent placements that do not involve severing family bonds forever." The bill memo also notes that this legislation would save the court system time and money by reducing the amount of costly termination hearings.

"What [the current law] does is it tips the balance inappropriately towards terminating parental rights in cases where a parent is in the criminal justice system, even when this outcome is not necessarily in the child's best interest and in the long-term interests of the family," Kraft-Stolar said.

Montgomery, D-Brooklyn, said many parents purposely avoid treatment because they are afraid of losing their children. "We want to make sure that parents can feel a sense of being ... empowered as a parent, to be able to have a family when they come back. And that becomes an incentive, in fact, to be able to return as opposed to being a permanent prison person."

"[Incarcerated parent's] rights are terminated based on the fact that a parent's sentence is longer than the ... law allows for them to be able to maintain their parental rights. Those children then get taken away, and the results of that are, in too many cases, those children also become part of the criminal justice system. We want to break that cycle," she said.

Assembly Corrections Committee Chairman Jeffrion Aubry, D-Queens, sponsor of the Assembly bill, emphasized the importance of family as an incentive and support system for those returning from prison or residential substance abuse treatment, and believes this bill will decrease re-internment. "We recognize that children are the unseen victims in this system," he said. "It works on both sides — it's good for the children, it's good for the parents."

Sen. Diane Savino, D-Staten Island, a co-sponsor of the bill, spoke from personal experience as a social worker with the state Child Welfare Association.

"There was something I had then that caseworkers today don't have," she said. "That was the discretion to make decisions based upon what I knew about the mother of that child, the relationship with that child, the level of planning and whether or not reunification would be successful. Caseworkers today don't have that discretion."

Mothers who had lost their children while incarcerated also spoke at the news conference, providing personal testimony as to the necessity of this legislation. The mothers spoke about the difficulties they faced maintaining contact with their children, and some reported child abuse occurring in foster care homes.

Brunilda Rivera, a Brooklyn mom who was imprisoned for 18 months, said her son was deprived of food and repeatedly locked in a room while in foster care. "Most kids want to be with their moms," she said. "It was a bad situation at home, but they put him in a worse situation."

"Even though it's an everyday struggle for us to get our lives together, to get clean and sober and to be a positive role model, we need a chance," she continued. "We definitely need a chance. We need someone to say, 'here, we're going to give you the hand you need and the proper steps to take so that you can be a better person and to be a better parent.'"

Her son, 13-year-old Brandon Rivera, said, "I'm glad that my mom is by my side right now helping other children get their moms back through passing this bill."