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November 28, 2022

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The Honorable Kathy Hochul
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

RE: Parental Equity Act S06389/A07347 (Brisport/Hevesi)

Dear Governor Hochul:

The Chief Defenders Association of New York (CDANY) urges you to sign the Parental Equity Act, which has passed both houses of the legislature. The Parental Equity Act (S06389/A07347) is a straightforward fix to the unintended consequences of an antiquated statute that was written primarily to facilitate private adoptions at a time when unmarried fathers were assumed to be uninvolved in their children's lives. It is time to modify the statute to recognize the important role that fathers play in the lives of children who enter the foster system, and to provide children and families the greatest opportunity to preserve their family bonds.

CDANY is a membership organization of appointed Public Defenders, Conflict Defenders, Executive Directors of non-profit public defense offices, and Administrators of Assigned Counsel Panels throughout New York State. Our organizations collectively provide the mandated service of indigent representation to close to 400,000 people annually in New York's criminal, family, and appellate courts. We are the voice of the defender organizations that are the fulcrum upon which the integrity of the criminal legal and family court systems rest.

Current Law Requires Unmarried Fathers to Pay Child Support in Order to Maintain Parental Rights

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When a child has been removed from their parent, placed in the foster system, and remains there for fifteen out of the most recent twenty-two months, the foster agency may move to terminate that parent's rights, which would then permit this child to be adopted out of the foster system. Under New York's Domestic Relations Law, only certain fathers of children in the foster system have the right to consent to or prevent their children's adoption. Only these "consent" fathers are entitled to challenge the state's attempt to permanently remove them from their children's lives by terminating their parental rights. In order to terminate the parental rights of a "consent" father and place his child for adoption, the state must establish a statutory basis for a finding of "unfitness" by clear and convincing evidence. All other fathers have no such right to challenge the adoption of their child, nor does the state have any obligation to establish a legal basis to permanently sever the parent-child relationship. These fathers are not considered "consent" fathers solely because they (1) were not married to the mother of their child at the time of their child's birth; and (2) have not paid child support to the foster agency during the time that their child was in the foster system. This is the case even though there is no requirement that foster agencies inform fathers of the requirement to pay support to the agency.¹ Indeed, a significant percentage of fathers are never even provided an option by which they *could* pay child support while their children are in the foster system in New York.² In the case of public adoptions, this distinction between "consent" fathers and all other fathers threatens to deprive *nearly all unmarried fathers* of children removed by the state of their parental rights.

Under the present law, the state regularly identifies a man as the father of a child in a pending neglect or abuse proceeding; arranges for visits between the father and his child; and gives the father a service plan setting forth the steps he needs to take to have his child in his care. Then, the state asks the court to conclude that this same man is *not* in fact a father with the right to consent to or veto his child's adoption solely because he failed to pay child support while the child was in the state's care—without ever telling him that he needed to pay support to establish his rights, nor providing him the means to do so. In contrast, the state is never permitted to place a child for adoption without the child's mother (or married father) either surrendering parental rights or having them terminated by a court after a full evidentiary hearing regarding the parent's ability to parent.

The Parental Equity Act Ends Disparate Treatment for Children and Families

The Parental Equity Act would end this disparate treatment and ensure that all parent-child relationships are protected equally. The bill would not decrease the ability of local child protective agencies to seek child support from the parents of children in the foster system or to terminate any parent's rights after a full

¹ See, e.g., *Matter of Mya Anaya M.*, 138 A.D.3d 569 (1st Dep't 2016); *Matter of Star Natavia B.*, 141 A.D.3d 430 (1st Dep't 2016); *Matter of Angel P.*, 137 A.D.3d 793 (2d Dep't 2016).

² See Amanda S. Sen, *Measuring Fatherhood: "Consent Fathers" and Discrimination in Termination of Parental Rights Proceedings*, 87 N.Y.U. L. REV. 1570, 1582-83 (2012).

evidentiary hearing. It would simply ensure that unmarried fathers are not required to meet support requirements that are not the same as they are for mothers and married fathers, and that do not negatively impact their children.

Current law is contrary to the best interests of children in the foster system. It is unquestionably in the best interests of children that they be raised in their own homes by their parents when their parents are willing and able to do so. Yet current law permits the permanent severance of the relationship between a child and their father based on a single factor completely unrelated to the father's ability to parent or their devotion to their child—namely, their ability to pay child support, *for which there is no collection process*.

This stands in direct contradiction to New York State and federal policies regarding family preservation and reunification, and unnecessarily deprives children of loving parental relationships. The Parental Equity Act will make New York state law consistent in its commitment to preserving the bonds of children in the foster system to their fathers whenever safely possible and will prevent the all-too-common scenario in which fathers are encouraged at the beginning of a proceeding to engage in planning for their children, only to have vibrant parent-child relationships extinguished at the end of those proceedings.³

Current law has a disproportionate impact on fathers and children of color. It is particularly important to ensure that all parent-child relationships are treated equally considering the racial disparities in the foster system. It is well documented that children of color and Black children in particular are overrepresented at every point in the foster system.⁴ These disparities are especially extreme in New York, where Black children are at least four times more likely than white children to be in the foster system.⁵ The Parental Equity Act will ensure all families receive equal protection under the law by requiring courts to apply the same standard to every parent before permanently severing a child's family ties.

Current law is unconstitutional as applied to the fathers of children in the foster system. The current statutory approach to fathers of children in the foster system is not only contrary to New York's commitment to preserving father-child relationships whenever safely possible, it also violates the United States

³ See, e.g., Eli Hager, *He Didn't Abuse His Daughter. The State Took Her Anyway*, The New York Times, Sept. 25, 2019, <https://www.nytimes.com/2019/09/25/nyregion/child-abuse-laws-ny-state.html>.

⁴ See, e.g., Children's Bureau, *Racial Disproportionality and Disparity in Child Welfare*, https://www.childwelfare.gov/pubPDFs/racial_disproportionality.pdf (citing empirical data on racial disproportionality in child welfare).

⁵ See NYS OCFs, *Racial and Ethnic Disparities in the Child Welfare System* (2011), <https://ocfs.ny.gov/main/recc/Exec%20Staff%20DMC%20presentation%20child%20welfare%20color%20070911.pdf>.

Constitution. A child's right to be raised by their parent, and a parent's right to raise their child, are fundamental Constitutional rights which cannot be conditioned on requirements that are unrelated to the parent-child relationship, such as payments to a state agency that do not even benefit the child. Moreover, to make an unmarried father's right to his child contingent on paying child support when neither mothers' nor married fathers' rights are limited in the same way is blatant gender discrimination that violates the Equal Protection Clause.⁶

The Parental Equity Act remedies current New York law that discriminates against unmarried fathers of children in the foster system, undermines parent-child relationships, and fails to prioritize the best interests of the child. The Parental Equity Act promotes the best interests of children in the foster system by ensuring that their relationships with their fathers are not permanently ended and parental rights terminated, unless their fathers are found unable to parent. The legislation will not have any effect on private adoptions. Given the broad support for this legislation from stakeholders working across the foster system – including attorneys for children, impacted birth parents and advocates, and attorneys for parents – it is time to make this much needed change.

We urge the Governor to sign the Parental Equity Act (S06389/A07347) into law.

Questions? Contact CDANY Legislative Co-Chairs Laurette Mulry (lmulry@sclas.org) or Andrea Nieves (anieves@nycds.org).

⁶ Chris Gottlieb and Martin Guggenheim, *New York's Unconstitutional Treatment of Unwed Fathers of Children in Foster Care*, 46 N.Y.U. REV. L. & SOC. CHANGE 539 (forthcoming 2022).