# Legal Basis to Terminate Parental Rights in NY

## TERMINATIONS

The Grounds to Terminate Parental Rights in NYS

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## ASFA Requirements

- Under ASFA and NYS law SSL § 384—b DSS/ACS must file at:
  - A child in foster care for 15 months in a row or 15 out of the most recent 22 months – starting at adjudication or 60 days after temp placement
  - A child in foster care that a court has determined is abandoned
  - A child in foster care where the parent has been criminally convicted of ASFA crimes

## Exceptions to the filing

- The child is in foster care but with a relative
- There is a “compelling reason” why it is not in the child’s best interests
- The agency did not provide the services needed
- The parent is incarcerated or in substance abuse program and this is significant reason child is in foster care and has maintained a “meaningful role” in the child’s life
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#### What is a compelling reason?

- Statute lists some possible ones:
  - Child in care on JD or PINS and other goal is more appropriate
  - Child is 14 or older and will not consent
  - There are insufficient grounds for a TPR
  - The child is in care on an Art. 10, no dispo yet and appropriate goal is still reunification
  - Others based on child’s best interests

#### What does it mean to maintain a “meaningful role”?

- Evidence that shows that the parent expresses or acts in ways that show concern for the child such as:
  - Letters, telephone calls, visits with child
  - Working with caseworker, court, lawyers, service providers
  - Taking advantage of services offered, complying with the service plan, positive response to diligent efforts by agency

#### Who Decides?

- ACS/foster care agency decide if they are going to file and when
- There is no LAW re what the permanency goal has to be in order to file – policy considerations
- Court can order the filing but does not have to order it; would not seem court can order agency NOT to file
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Termination – SSL§384-b
Clear & Convincing Burden of Proof

- Abandonment
- Permanent Neglect
- Mental Retardation
- Mental Illness
- Severe Abuse
- Repeated Abuse

Abandonment

Six Months In Care

Most recent 6 months:
• No visits or communication or no substantial contact
• Not discouraged or prevented visitation
• Diligent efforts doesn’t have to be proved
• Dispositional hearing not required

Abandonment

• Child in care of county or agency for six months immediately prior to date of filing petition and
• Parent failed to visit child or failed to communicate with child or failed to contact agency

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Abandonment (cont.)

• Or any such visits/communications/contacts were inconsequential (lots of caselaw on this) and
• Parent physically and financially able to visit/communicate/contact and
• Parent not prevented or discouraged from doing so by agency or court and
• Parent evinced an intent to abandon.

Social Services Law 384-b 5(a)(b)

• The ability to visit or communicate is legally presumed unless there is evidence to the contrary.
• The subjective intent of the parent unsupported by evidence shall not preclude a finding of abandonment.
• The court cannot require a showing of diligent efforts to encourage the parent to visit or communicate.

Permanent Neglect

One Year in Foster Care or 15 of Last 22 Months

• Parent fails to:
  – Maintain contact or
  – Plan for return
AND Agency provided diligent efforts unless court excuses
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Insubstantial or Infrequent Contacts

Visits or communication which is of such a character as to overtly demonstrate a lack of affection and concerned parenthood shall not be deemed a substantial contact.

Failure to Plan

• Take such steps as may be necessary to provide an adequate, stable home and parental care for the child within a reasonable period of time under the available financial circumstances.
• The plan must be realistic and feasible.
• Court may consider the failure of the parent to utilize medical, psychiatric psychological, and other social and rehabilitative services and material resources made available to the parent.

Diligent Efforts MUST be Proven Unless Excused:

• Visitation
• Appropriate assessment and services and transportation and funding
• Planning with parent
• Keeping parent informed

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What Are “Diligent Efforts to Reunify Foster Child with Parent”?

• Diligent efforts are reasonable efforts.

• Social Services Law 384-b 7 (f) Reasonable attempts by an authorized agency to assist, develop, and encourage a meaningful relationship between the parent and child, include:
  
  (1) consultation and cooperation with the parents in developing a plan for appropriate services to the child and his/her family;
  
  (2) making suitable arrangements for the parents to visit the child;

(3) provision of services and other assistance to the parents, except incarcerated parents, so that problems preventing the discharge of the child from care may be resolved or ameliorated;

(4) informing the parents at appropriate intervals of the child’s progress, development, and health.

What Are Reasonable/Diligent Efforts

Discharge planning for reunification with parents, including:

• Visitation at least biweekly (unless court order limiting), financial assistance and transportation to make it happen, follow-up on missed visits.

• Documentation of alternative permanency planning when return not possible.
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#### What should I be telling the caseworkers to do?

- Document everything—all contacts and attempted contacts with parents, relatives, child, foster parents, service providers.
- Use direct quotes frequently.
- Keep records of phone contacts and messages. Every contact that you have with a parent should record that you mentioned to parent some aspect of the current service plan.

#### Permanent Neglect

**Exceptions to Diligent Efforts Requirement**

- Court has previously found that agency need not provide reasonable efforts -FCA § 1039-b
- More than six months without address
- Incarcerated and fails to cooperate more than once
- Efforts to reunite would be detrimental

#### Permanent Neglect (cont.)

**Special Situations**

- Missing parents
- Incarcerated parents
- “Denying” Parents

**Must Hold Dispositional Hearing**

- May or may not terminate
- Suspended judgment

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Incarcerated and Residential Parents

- New law in this area – need to be careful

Court must consider “special circumstances” of incarcerated and residential treatment parents and if there was some “limitations” placed on contact or on service availability that impacted the parent’s ability to stay in contact with the child or to plan for the child’s future

What does this really mean?

Not retroactive – Matter of Yasiel P. 79 AD3d 1744 (4th Dept. 2010)

Summation of Permanent Neglect

**Permanent Neglect: Fact Finding**

- Child in care with county/agency for either at least one year or 15 out of the most recent 22 months and

- Diligent/reasonable efforts addressing problems were made to reunify the family and failed or excused

  - (1) as detrimental to best interests of child or

Summation of Permanent Neglect (cont.)

- (2) parent failed to keep agency apprised of their whereabouts for at least 6 months during the one year period or

- (3) court previously granted a “no reasonable efforts” to reunify order and

- Parent substantially and continuously or repeatedly failed to maintain contact with the child and not prevented from doing so by agency or court order or
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Summation of Permanent Neglect (cont.)

- Parent failed to plan for future of the child and
- Parent had the physical and financial ability.
- (BUT for incarcerated parent proof of diligent/reasonable efforts may be excused if (s)he failed on more than one occasion to cooperate with the agency on visitation or planning) THE TWO LETTER RULE.

At Dispositional Hearing Termination parental rights is in the child’s best interest.

Suspended Judgments on Permanent Neglect TPR

Court can issue suspended judgment on permanent neglect TPRs for up to 1 year and can issue an extension for additional 1 year, but NO MORE.

- SJ order must have terms and conditions and duration specified
- SJ order must contain date for court review no later than 30 days before end of order

Suspended Judgments

What happens if parent violates SJ?

- Must bring case back into court before the set date for the review
- Judge can now TPR or continue SJ if not continued before
- Must make sure court finds violation but also reviews best interests
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**Mental Illness/Mental Retardation**

**One Year In Care**

Parent presently mentally ill or mentally retarded as defined by statute

- Expert examines parent and testifies
- Must not be able to parent for the foreseeable future
- Diligent efforts do not have to be proven
- Dispositional hearing not required

**Mental Illness/Retardation**

- Child has been in care of county/agency for the last year prior to filing the TPR petition and
- Parent is mentally ill (expert evidence needed) or
- Parent is mentally retarded (expert evidence needed) and
- As the result of mental illness or mental retardation the parent cannot now provide proper and adequate care for the child and such impairment is likely to remain in the foreseeable future.

**Mental Illness**

Mental illness means an affliction with a mental disease or mental condition which is manifested by a disorder or disturbance in behavior, feeling, thinking or judgment to such an extent that if such child were placed in or returned to the custody of the parent, the child would be in danger of becoming a neglected child as defined in the family court act.
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Mental Retardation

**Mental retardation** means subaverage intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior to such an extent that if such child were placed in or returned to the custody of the parent, the child would be in danger of becoming a neglected child as defined in the family court act.

Severe Abuse/Repeated Abuse

**Child in Care**

- Severe abuse based on certain family court or criminal court findings
- Repeated abuse based on more than one family court abuse finding same child or sibling
- Must show diligent efforts unless court has previously ruled or finds exception
- Must have dispositional hearing

Severe Abuse

**Severe Abuse**

- Child in care of county or agency and
- Child found to be severely abused (see definition in Social Services Law §384-b 8.(a) which includes a parent convicted of murder/manslaughter (or attempt) of child, other parent or a child where they are person legally responsible.
Severe Abuse (cont.)

• Diligent/reasonable efforts were made to encourage and strengthen the parental relationship when such efforts will not be detrimental to the best interests of the child or

• The family court previously granted a FCA 1039-b “no reasonable efforts” required to reunify order and

• Such diligent/reasonable efforts have been unsuccessful and are likely to be unsuccessful in the foreseeable future.

Family Court Severe Abuse Findings

• The child has been found to be an abused child as a result of reckless or intentional acts of the parent committed under circumstances evincing a depraved indifference to human life, which result in serious physical injury to the child as defined in subdivision ten of section 10.00 of the penal law.

Family Court Severe Abuse Findings (cont.)

• Does not include the “risk of” section of FCA 1012.

• The child has been found to be an sexually abused child, as a result of such parent's acts; provided, however, the respondent must have committed or knowingly allowed to be committed a felony sex offense. 
(Penal Law 130)
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Certain Criminal Convictions

(iii) (A) The parent of such child has been convicted of:

- Murder 1, 2; manslaughter 1, 2, (or attempts)
- Or conspiracy, criminal facilitation, solicitation

Certain Criminal Convictions (cont.)

- The victim of any such crime was another child of the parent or another child for whose care such parent is or has been legally responsible or another parent of the child, unless the convicted parent was a victim of physical, sexual or psychological abuse by the decedent parent and such abuse was a factor in causing the homicide; etc
- Assaults, Sexual Offenses, etc. Need to read SSL 384-b (8) (a) for the details

Repeated Abuse

Repeatedly Abused

- Child in care of county or agency and
- This child has been found to be abused (case #2) [under FCA §1012 (e)(i) or (iii)] and
- This child and/or another child of this parent was previously adjudicated as abused (case #1) [under FCA §1012 (e)(I) or (iii)] within 5 years of filing abuse case #2 and
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Repeated Abuse (cont.)

• Diligent/reasonable efforts were made to encourage and strengthen the parental relationship when such efforts will not be detrimental to the best interests of the child or family court previously granted a FCA 1039-b “no reasonable efforts” required to reunify order and

• Such diligent/reasonable efforts have been unsuccessful and are likely to be unsuccessful in the foreseeable future.

Other Information

• You can plead one or more grounds to do a TPR
• You may settle case as to one or both parents via a surrender (with or without conditions) or a suspended judgment and proceed with the trial vs. other
• You can prevail as to one parent and fail as to the other
• Some parents (fathers) may have consent father rights and others will have only notice father rights or no rights

Other Information (cont.)

• Court will have to rule on whether the other parent has rights which will be binding on any adoption court
• “Dale P” TPR possibilities
• Other permanency options should be considered when and where appropriate

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Dispo Issues

• Children who will not consent to an adoption
  Before 14
  After 14
  Should you even file?

APPEALS!! – No adoption while pending!