

Grounds for TPR in New York State

By Margaret A. Burt, Esq.

PROOF MUST BE “CLEAR AND CONVINCING” 6/16

Abandonment:

- child must be in foster care or Article 10 court ordered direct care for more than 6 months
- in the most recent 6 months there was no meaningful contact or communication with child or agency or foster parent/ care provider
- parent was physically and financially able - presumed unless proof otherwise
- agency did not discourage or prevent contact - this can include parent who was court ordered to have no contact with child
- agency need not prove diligent efforts or attempts to contact parent

Permanent Neglect:

- child must be in foster care or Article 10 court ordered direct care for more than 12 months, even if there has not been an Article 10 disposition in place for 12 months OR child has been in care for 15 of the last 22 months
 - during any particular 1 year continuous period, parent either failed to maintain contact with the child or failed to plan for the child's future by failing to resolve the issues that resulted in the child being placed in and staying in care – (court must take into account if parent was incarcerated or inpatient drug treatment and if that hindered their abilities to visit and access services)
 - parent was physically and financially able to have contact and plan
 - the agency did not discourage or prevent the parent from visiting or planning
 - the agency offered diligent efforts to the parent to provide reunification consisting of visitation, services designed to assist the specific problems, transportation to visitation and services, planning with the parent, and information regarding the child's progress
 - the diligent efforts may be excused if
 - the court previously issued a “no reasonable efforts order” or
 - the efforts to reunite would have been detrimental to the child or
 - the parent was incarcerated and failed to respond on more than one occasion or
 - the parent failed for more than 6 months to keep the agency advised of address (court must take into account in parent was incarcerated or inpatient drug treatment and this hindered)

Parental Mental Illness or Intellectual Disability (used to be called Mental Retardation):

- child must be in foster care or Article 10 court ordered direct placement for more than 12 months
- parent is presently mentally ill or intellectually limited to the extent that they **can not safely care for the child now and in the foreseeable future**
- expert witness must be appointed, attempt to examine parent and must testify

Severe or Repeated Abuse

- child must be in foster care or Article 10 court ordered direct placement – no minimum time period
- child was severely abused as found in Article 10 or as described in statute regarding criminal convictions or
- two family court adjudications of child abuse against parent in 5 years
- diligent efforts by agency as described above in permanent neglect with same four exceptions available such as a “No Reasonable Efforts” finding