

KNOW YOUR RIGHTS:

Tips on Neglect and/or Abuse Fact Finding Hearings in Family Court

Information on fact finding hearings which are used to decide whether there has been abuse and/or neglect, and what can happen as a result of these hearings.

Neglect and/or abuse cases generally take place in three parts:

- 1) a "1028" or a "1027" hearing (held only if the family is separated at ACS's request; it decides if the family can be reunited while the rest of the case goes on) ACS is the New York City Administration for Children's Services.;
- 2) a **"fact-finding hearing" (to decide if child neglect and/or abuse occurred and if you are responsible for it), and,**
- 3) (if the judge finds neglect and/or abuse occurred) a "dispositional hearing" or a "dispositional and permanency hearing" (decides what happens to the children because of the neglect and/or abuse).

If you are accused of neglect and/or abuse (a "respondent") or you are the parent of a neglected and/or abused child, you have the right to a lawyer in the case. If you can't afford a lawyer, the judge must assign a free lawyer. To try to find a lawyer yourself, call the office for your area:

- Brooklyn Defender Services: (646) 974-9343;
- Bronx Defenders: (347) 778-1266;
- Center for Family Representation: (646) 809-4308 in Manhattan, or (347) 286-4365 in Queens.

You can also try, even if you are not the respondent:

- Legal Services - NYC: (917) 661-4500, or
- the New York City Bar Association: (212) 626-7383, or
- the Bronx Bar Association: (718) 293-5600 for a referral. There will also be a lawyer for your children.



917-661-4500

KNOW YOUR RIGHTS: Tips on Neglect and/or Abuse Fact Finding Hearings in Family Court



THE FACT-FINDING HEARING

The Hearing: If you are accused by ACS of neglect or abuse, you are entitled to have a trial (a Fact-Finding Hearing) where the ACS has to prove that you or another person did what ACS claims (or something else which amounts to neglect or abuse) AND that the (in)actions they have proven are equal to the legal definition of neglect and/or abuse.

Evidence: Laws and rules of evidence are not as strict in neglect and/or abuse cases as they are in other family or criminal cases; they may even seem unfair to you. For example, certain hearsay is allowed, most of your confidentiality protections are lost, and your right against self-incrimination is limited. There is no jury in Family Court; the judge decides what information to believe and how the law applies to your case.

A judge can make a finding against you **only if** s/he believes that a fair preponderance of the evidence proves there was, legally, neglect and/or abuse and that you are responsible. A **fair preponderance of the evidence** means it is more likely than not that events occurred the way ACS claims. ACS does not have to prove its case "beyond a reasonable doubt."

Settlements: Sometimes people decide they would rather settle their cases than go to trial. **A settlement is NOT the same as winning the case;** you will continue to be under the supervision of the court, ACS and/or a foster care agency. Some settlements involve admitting to neglect or abuse, and this admission can have serious consequences for you beyond this case. Ask your lawyer about this.

IF THE JUDGE FINDS NEGLECT AND/OR ABUSE

If a judge finds that you neglected and/or abused the children, ACS might ask the judge **TO TERMINATE REASONABLE EFFORTS**. This means ACS and the agencies do not have to give, find or arrange (make "reasonable efforts") for help for you and/or your children ("preventive services") to stay or get back together again. **ACS must ask for this in writing** (make a "motion") **AND** give your lawyer (or you, if you don't have a lawyer) a copy.

The judge can decide to terminate reasonable efforts if:

- 1) your parental rights to any of your other children **were terminated without your consent, OR**
 - a. you were **convicted** of murder or manslaughter of any of your other children, OR
 - b. you were convicted of assault, serious sexual abuse, or any facilitation, attempt or conspiracy to kill, seriously injure or sexually abuse any children for whom you are "legally responsible"; **OR**
- 2) a Family Court judge found (or might find) that there are "**aggravated circumstances**" in your case. Aggravated circumstances exist if a Family Court judge has found (or might find) that you have "**repeatedly abused**" or "**severely abused**" the children (see below).



917-661-4500

Legal Services NYC | 40 Worth Street, Suite 606, New York | legalservicesnyc.org

* The information in this factsheet does not constitute legal advice.

KNOW YOUR RIGHTS: Tips on Neglect and/or Abuse Fact Finding Hearings in Family Court



Once a judge decides to terminate reasonable efforts, ACS can start a Termination of Parental Rights case, if it has a legal basis, **even if the court did not order ACS to start such a case.**

If the judge decides you are not entitled to reasonable efforts, a "**PERMANENCY HEARING**" **must** be scheduled within 30 days. At **this** hearing the judge must decide what the **permanent outcome** for each of your children should be. Some possible outcomes are:

- return to you or the child's other parent;
- freeing the child for adoption, even without your consent (to do this, **a separate "termination of parental rights" case has to be started**);
- living permanently with a legal guardian who might be related to the child;
- permanent placement with a fit and willing relative (probably in a custody-like arrangement, but, maybe, in a long-term foster care arrangement).

"**REPEATED ABUSE**" can be found if:

- 1) ACS is accusing you of abuse; **AND**
- 2) there was a court finding of abuse against you less than 5 years ago; **AND**
- 3) ACS and/or the foster care agency gave your family services but these did not help; **OR** a judge previously said they did not have to give services.

"**SEVERE ABUSE**" can be found if:

- 1) a judge decides you meant to ("intentionally") or were so reckless that you caused (or could have caused) the child(ren) very serious physical injury (for example, burns). Allowing this to happen is called "evinced a depraved indifference to human life"; **OR**
- 2) the judge finds you seriously sexually abused the child(ren). This must be serious enough that, if it were a criminal case, you could be found guilty of "felony sexual abuse"; **OR**
- 3) that you knew about, and let such sexual abuse occur; **AND**
- 4) ACS and/or the foster care agency gave your family services but these did not help; **OR**
- 5) a judge previously said they did not have to give services.

ABUSE FINDINGS

If the judge found that you, or someone you permitted, abused your child(ren) in such a way that they

- were physically harmed and were, or could have been, harmed very seriously or could have died, or



917-661-4500

Legal Services NYC | 40 Worth Street, Suite 606, New York | legalservicesnyc.org

* The information in this factsheet does not constitute legal advice.

KNOW YOUR RIGHTS: Tips on Neglect and/or Abuse Fact Finding Hearings in Family Court



- were seriously sexually abused, the judge's fact-finding order must say that:
 - if you are again accused of abusing the child(ren) in the same way, a court can find that you have "repeatedly" abused them. If this happens, then
 - a separate case to terminate your parental rights can be started against you immediately based upon the finding of repeated abuse.

If the judge finds **SEVERE OR REPEATED ABUSE**, the order **must ALSO** say:

- s/he found that you repeatedly and/or severely abused the child(ren);
- how you did so;
- whether the finding is based upon "**clear and convincing evidence**" (this is a higher standard than the usual "fair preponderance of the evidence").

If the judge finds severe or repeated abuse, ACS can ask the judge to order the **termination of reasonable efforts** (see explanation above).

Because a finding of severe or repeated abuse has very serious consequences, **ACS must clearly warn you** in its legal papers listing the accusations against you ("petition") that they are charging you with severe and/or repeated abuse. The petition must also say that if the judge makes this finding, ACS can immediately start a separate TPR case against you. The first time you are in court on this case ("initial appearance") the judge must ask ACS if it is claiming severe and/or repeated abuse, and if it will try to provide it by clear and convincing evidence. If ACS says yes, the judge must tell you so.

IF YOU LOSE A FACT-FINDING HEARING

If you lose the fact-finding hearing and disagree with that determination you can "appeal," either within 30 days of the date the judge made the order or at the end of the dispositional hearing. You appeal in the Appellate Division of Supreme Court (NYS) which covers the Family Court where your case was heard.

IF YOU WIN THE FACT-FINDING HEARING

Even if you win the fact-finding hearing, a record against you probably still exists in the State Central Register of Child Abuse and Maltreatment (SCR) about those allegations. That record can be used against you if you try to get certain jobs, or care for someone else's children. Up to January 1, 2022, you must ask for a Fair Hearing from the SCR to amend and seal that record so that it cannot be used against you. On January 1, 2022 and after, you must still write to the SCR and ask to amend and seal the record; SCR will automatically do that without a Fair Hearing. If you do not write, SCR will not amend and seal the report.



917-661-4500

Legal Services NYC | 40 Worth Street, Suite 606, New York | legalservicesnyc.org

* The information in this factsheet does not constitute legal advice.

KNOW YOUR RIGHTS: Tips on Neglect and/or Abuse Fact Finding Hearings in Family Court



To try to have a report amended and sealed, you must call (212) 417-3614 or write to the SCR at:

NYS Office of Children and Family Services
State Central Register of Child Abuse and Maltreatment
P.O. Box 4480
Albany, New York 12204-0480
Attn.: Post-Intake Unit

IMMEDIATE FILING OF TERMINATION OF PARENTAL RIGHTS

If the judge finds severe or repeated abuse OR abandonment OR that reasonable efforts should be terminated OR that you committed the crimes listed above, a separate termination of parental rights case against you can be **started** (court papers are filed and served on you) **immediately**. A trial in the termination case may not start for several months; it depends on the legal reason for this case.

Even though ACS and/or the foster care agency can start a termination of parental rights case, they do not have to do so if: (a) the child(ren) are being taken care of by relatives; or (b) the agencies are not providing you with the services that their written plan lists as necessary for you to be reunited with your children or a judge has ordered for you and no order to terminate reasonable efforts exists, or (c) you are incarcerated, in immigration detention or removal proceedings, or in a residential drug treatment program **and** you maintain a meaningful role in your children's lives by remaining in contact with the children (letters, telephone calls, e-mail, texts, social media, other forms of communication, visits) and everyone else involved in your case **and** you work as best as you can to do the things that the foster care agency and court require you to do to reunite or remain involved with your children's lives, such as using drug abuse or mental health or other prison programs, or (d) there is another documented, compelling reason not to file the termination of parental rights case.

Updated July 2021



917-661-4500

Legal Services NYC | 40 Worth Street, Suite 606, New York | legalservicesnyc.org

* The information in this factsheet does not constitute legal advice.