

HANDOUT N

INCARCERATED PARENTS

The parental rights of an incarcerated parent can be terminated on any of the **statutory** grounds including abandonment. Termination of the parental rights of incarcerated parents should depend largely on the nature of the parent-child relationship. Some important considerations are whether, prior to imprisonment, the parent neglected and/or abused the child, whether the parent failed to communicate with the child, whether the parent failed to support, and whether the parent has an interest in maintaining a close relationship with child.

Diligent Efforts:

- The agency is **not** required to provide services or other assistance to resolve or ameliorate family problems.
- The agency is required to suggest social rehabilitative services to resolve or correct the problem other than incarceration itself which impair the incarcerated parent's ability to maintain contact with child.
- When an incarcerated parent has failed on more than one occasion, while incarcerated, to cooperate with the agency in its efforts to assist the parent to plan for the future of the child **or** in its efforts to arrange and for visitation then "diligent efforts" are not required.

Corrections Law §619 requires any official in a New York State correctional facility to cooperate with an authorized agency in making suitable arrangements for an inmate to visit with his or her child.

An incarcerated parent's desire to keep children in foster care until released from long-term incarceration may constitute failure to plan/permanent neglect. Matter of Gregory B., 74 N.Y.2d 77 (1989).

Visitation:

- The agency is **not** required to arrange for incarcerated parents to visit the child **outside** the correctional facility unless it is reasonably feasible and in the best interest of the child.
- The agency is required to make suitable arrangements with the correctional facility and other appropriate persons for the incarcerated parent to visit the child **within** the correctional facility, if such visits are in the best interest of the child. Arrangements include the transportation of the child to the correctional facility.
- If the parent is incarcerated in a correctional facility outside the state, the agency must make arrangements only if reasonably feasible and permissible in accordance with the laws and regulations applicable to the facility.
- If the agency determines that visitation is not in the best interest of the child, it cannot initiate a termination proceeding based on permanent neglect alleging lack of contact.

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