

## I. Introduction

The grounds for court action to protect abused and neglected children are found in Family Court Act §1012. That section provides a series of inter-related definitions to be used in "determining when the state, through its family court, may intervene against the wishes of a parent on behalf of a child so that his needs are properly met."<sup>1</sup> In essence, section 1012 gives the Family Court broad protective jurisdiction over all forms of child maltreatment.<sup>2</sup> If the Court determines that a child has been abused or neglected, it is authorized to make a wide array of dispositional orders, ranging from court supervision of the parents to the placement of the child in foster care and, in extreme cases, to the termination of parental rights.

To safeguard parental rights – and to prevent unnecessary state intervention into private family matters – the Family Court cannot act without sufficient, objective evidence of the need to take protective action; the child must be *proven* to be "abused" or "neglected."

Unfortunately, there is a dearth of understanding about how to prove that a child has been maltreated. This is no better evidenced than in court hearings where the petitioner spills out all the "facts" of the case – like so many pick-up sticks – leaving to the judge the responsibility of choosing the relevant information to determine whether a child has been abused or neglected.

This monograph seeks to fill this gap by providing an easy to use description of the patterns of proof in child abuse cases. All forms of child maltreatment present substantial problems of proof. However, for reasons of space, this monograph is limited to the proof of child abuse. For the same reason, it does not dwell on the technical rules of evidence. Readers interested in the latter are directed to the many fine publications on the subject.<sup>3</sup> Instead, it describes broad patterns of direct and circumstantial proof used to establish that a child is abused within the meaning of the New York Family Court Act.

### Chart #1

#### PATTERNS OF PROOF ESTABLISHING THAT A CHILD HAS BEEN ABUSED

##### Direct Proof

- *Testimony from family members*
- *Other eyewitnesses*
- *The child's statements*
- *The parent's admissions*

##### Circumstantial Proof of Physical Abuse

- *Apparently inflicted injuries (suffered while in the parents' custody)*
- *Unsatisfactory parental explanations*
- *Behavioral indicators*

##### Circumstantial Proof of Sexual Abuse

- *Signs of violent sexual assaults (suffered while in the parents' custody)*
- *Signs of sexual activity in circumstances making it unlikely that the child was engaged in voluntary sexual activity with a peer.*

• *Direct proof* – firsthand accounts of parental assaults which caused or were capable of causing serious injury.

• *Circumstantial proof* – "apparently inflicted" injuries which, unless satisfactorily explained, establish that the child was assaulted in a way that caused or was capable of causing serious injury.

1. Fam. Ct. Act §1011 (1983).

2. See generally Besharov, "State Intervention to Protect Children: New York's Definitions of 'Child Abuse' and 'Child Neglect'," 26 *New York Law School Law Review* 723 (1981)

3. See, e.g., New York State Child Protective Services Training Institute, *Advanced Legal Desk Reference Manual* (Family Life Development Center, Cornell Univ., 1983); Bahlman & Johnson, "Trial Issues in Child Abuse," in Besharov, D., *The Abused and Neglected Child: Multidisciplinary Court Practice*, p. 439 (1978).