

NEW YORK STATE

DEPARTMENT OF SOCIAL SERVICES

40 NORTH PEARL STREET, ALBANY, NEW YORK 12243



BARBARA B. BLUM
Commissioner

[An Informational Letter informs local districts of potential developments in the Social Services field, or of actual or potential developments in collateral fields of interest]

INFORMATIONAL LETTER

TRANSMITTAL NO.: 82 INF-3
[Services]

TO: Commissioners of Social Services

SUBJECT: Chapter 284, Laws of 1981 Amendments
Affecting Termination of Parental Rights
Proceedings

DATE: February 24, 1982

SUGGESTED DISTRIBUTION: Commissioner
Directors of Services
All Child Protective Services Staff
All Child Welfare Staff
County Attorneys/Social Services Attorneys
Authorized Agencies

CONTACT PERSON: Questions concerning policy and program issues regarding this release should be directed to Mr. H. A. Harkess, Office of Policy Planning, Division of Services by calling 1-800-342-3715, Extension 4-9574. Questions concerning legal matters relating to this release should be directed to Mr. John Stupp, Assistant Counsel, Office of Legal Affairs, by calling 1-800-342-3715, Extension 3-3272.

I. PURPOSE

The purpose of this Letter is to inform local districts, county and social services attorneys and authorized agencies of the 1981 amendment by Chapter 284 Laws of 1981 to paragraphs (b) and (c) of subdivision 4 of Section 384-b of the Social Services Law, which sets the dates up to which certain actions shall be counted for the purposes of establishing grounds for the termination of parental rights and the commitment of guardianship and custody of a child to a local commissioner or authorized agency.

FILING REFERENCES

Previous INFs/ADMs	Dept. Regs.	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous References
		SSL 384-b.4 (b) SSL 384-b.4 (c)		

II. BACKGROUND

Prior to the enactment of Chapter 284, Social Services Law 384-b.4(b) stated that in order to establish grounds for abandonment, the parent(s) must have "abandoned such child for the period of six months immediately prior to the initiation of the proceeding." SSL 384-b.4(c), which set the grounds upon which termination of parental rights for reason of mental illness or mental retardation and inability to adequately care for a child because of such condition, required that a child had to have been "in the care of an authorized agency for the period of one year immediately prior to the initiation of the proceeding."

The term "initiation of proceeding" was generally understood to mean the service of notice upon the parent of the petition seeking termination of parental rights and the commitment of custody and guardianship of the child upon the parent following provisions contained in 384-b.3(e) of SSL. In at least one recent instance, this has resulted in a refusal to terminate a parent's rights to custody and guardianship. Although the parent had not been in contact with or seen the child nor contacted the agency caring for the child for a period of almost two years, she did contact the agency several days before actually being served notice of a petition seeking to terminate parental rights by reason of abandonment. (See In the Matter of Christine B. Kent, 104 Misc. 2d 196.) In cases involving parents who remain unable to properly and adequately care for a child because of the parent's mental illness or mental retardation, some cases initiated under Section 614 of the Family Court Act were deemed to have met the one year agency custody requirement if the custody occurred for one year prior to the filing of the petition seeking commitment of the child's custody and guardianship. In other cases initiated under Section 384-b of the Social Services Law courts have held that the time period must be counted to the date of service of notice on petition to the parent. The result was that agencies, districts and parties to such proceedings were unclear as to when the time periods to be counted for establishing these particular grounds were to be determined.

Chapter 284, Laws of 1981, makes it clear that for purposes of determining the time periods for establishing these particular grounds for the termination of parental rights, the date of the filing of the petition shall be governing.

III. PROGRAM IMPLICATIONS

Local districts and agencies now have clear and definite statements as to when the time ends for determining these particular grounds for petitions seeking the commitment of custody and guardianship of a child. In each case, the time period ends upon the filing of the petition seeking terminations.

The legislative change made by Chapter 284 does not change the language of Section 384-b.3(e) of the Social Services Law as to the initiation of a proceeding. The initiation of a proceeding still begins only upon the service of notice of the petition upon the parent(s) or other persons legally entitled or otherwise directed to receive service. The only thing that is changed by Chapter 284 is the date upon which the time periods end for determining grounds for commitment based upon abandonment or mental illness or retardation.

IV. RECOMMENDATIONS

Districts should provide widespread distribution of this release to all child protective and children's services staff and to all authorized agencies involved in custody and guardianship proceedings as well as to county and social services attorneys.



Morris P. Phillips
Deputy Commissioner
Division of Services

