

NEW YORK STATE

DEPARTMENT OF SOCIAL SERVICES

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Commissioner



INFORMATIONAL LETTER

TRANSMITTAL NO: 88 INF-76

TO: Commissioners of Social Services

DIVISION: Family and Children's Services

SUBJECT: The Laws of 1988: Pertaining to Child Abuse and Neglect

DATE: December 5, 1988

SUGGESTED DISTRIBUTION: Directors of Services
Child Protective Services Staff
Legal Staff
Staff Development Coordinators

CONTACT PERSON: Any questions about this release should be directed to Fred Cantlo, Regional Director, Metropolitan Regional Office, telephone 212-488-3845; John O'Connor, Regional Director, Albany Regional Office, telephone 518-432-2751; Jack Klump, Regional Director, Syracuse Regional Office, telephone 315-428-3230; Frank Petrus, Regional Director, Rochester Regional Office, telephone 716-238-8201; or Linda Brown, Regional Director, Buffalo Regional Office, telephone 716-847-3145.

The purpose of this letter is to inform local districts of the provisions of Chapters 102, 271, 452, 457, 478, 527, 543, 545, 557, 634 and 673 of the Laws of 1988, which amended sections of the Family Court Act, Social Services Law, Domestic Relations Law, and Surrogate Court Procedure Act pertaining to child abuse and neglect. The Child Protective Services Manual will be updated to

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Department Regs.	Social Services Law and Other Legal References	Manual References	Miscellaneous Reference
			FCA 651-a, 821(1)(c) 827 (a);1022(a)& (f),1023,1027 (a)&(b), 1028 1029(d);1030; 1035;1047(b); 1081-1084;SSL 412(1),(2)&7(a), 415,422(2)(a); 422(8)and(13); 424-a; 424-c; DRL 240.1-a SCPA 1725		

DSS-329 (Rev. 10/7)

provide information regarding many of these provisions, including any which require necessary actions to be taken by local CPS staff.

The following is a description of each of the sections of the Family Court Act, the Domestic Relations Law and the Surrogates Court Procedure Act which were amended by the previously mentioned Chapter Laws of 1988.

° FCA 821(1)(c), 827(a) and 1037(a) - Chapter 271 of the Laws of 1988 amended Sections 827 and 1037 of the Family Court Act and added a new paragraph to Section 821(1) of the Family Court Act to expand the authority of the Court to consider both the safety of a parent and her child in issuing a warrant in either a child protective or a family offense proceeding. The Family Court may consider the safety of the child(ren) in a family offense proceeding by collecting information on the petition about the child(ren) and utilizing the safety of the child(ren) as a criteria for issuing a warrant directing the respondent to be brought before the court. Likewise, in a neglect or abuse proceeding, Section 1037(a) of the Family Court Act was amended to expand the courts authority to issue a warrant to include instances where the parent in the home of the child or the adult responsible for the child's care is endangered. Chapter 271, which became effective July 19, 1988, is a valuable statutory change because it recognizes the importance of looking at the safety of children in domestic violence situations and addressing the safety needs of victims of domestic violence in child abuse and neglect proceedings.

° FCA 651-a and DRL 240.1(a). Chapter 452 of the Laws of 1988 added a new Section 651-a of the Family Court Act and amended Section 240 of the Domestic Relations Law to limit the use of child abuse and maltreatment reports in custody and visitation proceedings. The amendment prohibits reports of child abuse and maltreatment from being considered in judicial proceedings affecting the custody and visitation of minors unless such reports have been determined to be indicated and the subject of the report has been notified of the indication. Further, if an indicated report is not corroborated, it may not be sufficient to make a fact finding of abuse or maltreatment in a custody or visitation proceeding. The purpose of this amendment is to address the misuse of the SCR in visitation and custody cases when false malicious reports are made to the SCR to obtain unfair leverage in custody or visitation proceedings. Chapter 452 became effective August 11, 1988.

° FCA 1022(f), 1023, 1028 and 1029(d). Chapter 673 of the Laws of 1988 amended these sections of the Family Court Act to authorize the court to issue a temporary order of protection prohibiting an allegedly abusive parent from remaining in the home with the child prior to the filing of an abuse or neglect petition when it is determined that such child is in imminent risk of danger. Amendments to Sections 1022 and 1023 of the Family Court Act provide specific authority for a Family Court to issue a temporary order of protection

prior to the filing of a petition alleging child abuse or neglect. Section 1028 of the Family Court Act has been amended to provide that a temporary order of protection can be issued in a hearing on the application to return a child temporarily removed. Section 1029 was amended to provide that a temporary order of protection could require the allegedly abusive or neglectful parent or other person legally responsible to stay away from the home, and/or the child. Family Court can order that visitation between the child and allegedly abusive or neglectful parent be allowed and also require that the parent or person legally responsible provide for the child's medical expenses arising from the incidents upon which the order is based. Finally, an addition to Section 1029 of the Family Court Act provides the authority for the Family Court to issue temporary orders of protection which would not: limit the authority of the court to order removal of a child from the home; limit the authority of persons authorized to make emergency removals of abused or neglected children from their homes; or, authorize the court to award permanent custody of a child as part of a temporary order of protection. Chapter 673 became effective September 1, 1988.

° FCA 1022(a), 1023, 1027(a) and (b); 1028

Chapter 527 of the Laws of 1988 amends Sections 1022, 1023, 1027 of the Family Court Act to clarify notice requirements with respect to hearings concerning temporary orders of removals. Specifically, when workers are seeking removal orders pursuant to Section 1022 (before the petition) or Section 1027 (after the petition) or when workers take protective custody of a child without the consent of the parent or person legally responsible, they must inform the children's parents or other legally responsible persons of the date, time and place where the application will be made, of their right to be present at the removal hearing and of their right to be represented by counsel.

Chapter 527 amends Section 1023 of the Family Court Act to require the agency seeking a removal order to make every reasonable effort to provide the parent or other person legally responsible with information concerning the temporary removal hearing which was described in the preceding paragraph.

Chapter 527 amends Section 1027(b) of the Family Court Act to add a requirement whenever the court orders the temporary removal of a child after an abuse or neglect petition has been filed. In such situations parents or persons legally responsible must be served with the summons and petition at the time of removal if physically present and if they have not been previously served with the summons and petition. If they are not present at the time of removal then service of the summons and petition is required within two court days.

Finally, Section 1028 which governs applications for return of a child temporarily removed, permits the parent or other person legally responsible or law guardian to apply for a hearing to determine whether the child should be returned. The hearing shall be held if the parent or other person legally responsible did not appear at the temporary removal hearing or upon good cause shown. The section was amended to require the court to also hold a hearing to determine if the child should be returned if the parents were present at the removal hearing but did not have the opportunity to be represented by counsel. Section 1028 provides that the hearing must be held within three court days except upon good cause shown. Chapter 527 adds a provision that the hearing can not be adjourned except upon good cause shown. In addition, the amendment to Section 1028 establishes the standard that the child be returned unless returning the child presents an imminent risk to the child's life or health. It removes the provision that the temporary removal be continued if there is a substantial probability that the child will be found to be abused or neglected and that the final disposition will place the child outside of the home. Chapter 527 became effective August 11, 1988.

° FCA 1022(a), 1027(b) and 1028. Chapter 478 of the Laws of 1988 amends Section 1022, 1027 and 1028 of the Family Court Act to require the court, when determining whether removal or continuing the removal of a child is necessary, to assess whether reasonable efforts were made to prevent or eliminate the need for foster care placement. Where efforts were appropriate, but were not made, the court may order child protective services to provide or arrange such services. Where efforts were not made, but the lack thereof was appropriate, the court order must include such a finding. Chapter 478 became effective November 1, 1988.

° FCA 1030, 1035 and 1081-1084. Chapter 457 of the Laws of 1988 establishes procedures to allow non-custodial parents and grandparents of children placed in foster care through a child protective proceeding (Article 10 of the Family Court Act) or through a voluntary placement agreement (Section 358-a and 384-a of the Social Services Law) to enforce their visitation rights unless such rights would endanger the child's life or health.

In child protective proceedings, the non-custodial parent or grandparent of a child temporarily removed to, or placed in, foster care would be able to petition the court to enforce an order, judgment or custody agreement providing the petitioner with visitation rights. Section 1035 of the Family Court Act requires that the summons and

complaint be served on the non-custodial parent in an abuse or neglect proceeding. Chapter 457 added language to Section 1035 to require the summons and complaint be accompanied by notice of the non-custodial parent's right to seek enforcement of visitation rights with the child. The notice must also contain the name and address of the agency or official to whom temporary custody has been transferred.

Chapter 457 also added a new Section 1030 to the Family Court Act to provide the respondent in a child protective proceeding (i.e., the person who allegedly abused or neglected the child) with the right to visitation when his or her child has been temporarily removed from the home prior to disposition, unless such visitation previously has been limited by an order of the Family Court. The court can order regular visitation if so requested and visitation can only be denied if the court finds that the child's life or health would be endangered by such visitation. However, the court may decide to require that the visits be supervised by a social services district employee when it is in the best interest of the child. Section 1030 also allows any party to the proceeding or the child's law guardian to apply to the court for modification of the visitation order upon good cause shown. Finally, any visitation order made pursuant to Section 1030 would terminate upon the court's entering an order of disposition. Chapter 457 became effective November 1, 1988.

° FCA 1047(b). Section 1047(b) of the Family Court Act provides that reports prepared for the court's use at a dispositional hearing are confidential. Prior to the 1988 amendment the Section provided that the court may withhold or disclose in whole or in part such reports to the law guardian, or respondent's counsel. Chapter 102 of the Laws of 1988 amended Section 1047(b) to require the court to make the reports available to all counsel, but specified that reports could be withheld from disclosure if the reports are not relevant; confidentiality has been promised to sources of information; or disclosure would not be in the interests of justice or the best interests of the child when disclosure is denied. The amendment requires the court to advise the parties that full disclosure was not made and to state its reasons for taking this action. Denial of full disclosure is made subject to review and appeal. Chapter 102 became effective June 3, 1988.

° SCPA 1725. Chapter 557 of the Laws of 1988 established a new judicial procedure in the Surrogate's Court Procedure Act. The Court will now receive and review petitions for the temporary guardianship of pre-adoptive children who are to be adopted. After considering the best interests of the child, the Court is required to issue an order that would either appoint the petitioner as temporary guardian, continue the proceeding for further investigation, or deny the petitioner and remove the child from the petitioner. This new judicial procedure requires the surrogate to direct the local child protective services agency to conduct an investigation to assess the condition of the child when the court: a) denies an application for temporary guardianship; (b) removes a child from

the physical custody of the petitioner. Also, an investigation is to be ordered by the court when the order of temporary guardianship expires before the adoption has been finalized or if the petition for adoption is withdrawn or denied. Chapter 557 is effective October 1, 1988.

The following is a description of various amendments made to Article 6 of Title 6 of the Social Services Law by the Laws of 1988.

° SSL 412.1 and 412.2 - Chapter 543 of the Laws of 1988 amended the definitions of "abused child" and "maltreated child" to include children with handicapping conditions who are provided residential care in the New York State School for the Blind, the New York State School for the Deaf, institutions for the instruction of the deaf and the blind, private residential schools within the State approved by the Commissioner of Education for special education services or programs, and facilities operated by special act school district. The amendment applies to handicapped persons who are between 18 and 21 years of age or who are 21 years of age and are to remain in school until the completion of the school year or the summer program. Chapter 543 became effective on August 11, 1988.

° SSL 412.7(a) - Chapter 634 of the Laws of 1988 amended Section 412.7 of the Social Services Law to ensure that the protections afforded to children in residential care apply to all children residing in child care programs and facilities, including agency operated boarding homes (AOBHs). This amendment means that reports involving children in AOBHs will not be investigated jointly by the Department and local districts (Type II). Instead such reports will now be investigated solely by the Department (Type III). Chapter 634 became effective September 1, 1988.

° SSL 415. Chapter 545 of the Laws of 1988 amended Section 415 of the Social Services Law to allow mandated reporters to report suspected child abuse or maltreatment by telephone facsimile machines. Chapter 545 becomes effective on January 1, 1989.

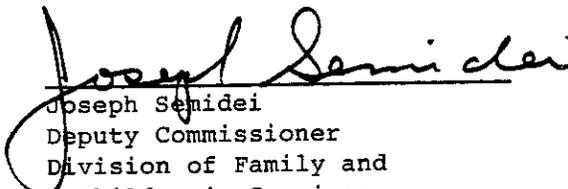
Chapter 634 of the Laws of 1988 amended Section 415 to change the procedure for the submission of written reports (DSS 2221-A) involving a child cared for away from his or her home (i.e. foster care, residential care). In such instances written reports should be submitted to the State Central Register, which then is required to forward the report to the appropriate investigatory agency. (Effective 9/1/88)

° SSL 422.2(a) and 422.13. Chapter 545 of the Laws of 1988 amended Section 422.2(a) to provide that a special unlisted express telephone number be instituted for use only by mandated reporters. (Effective 1/1/89)

° SSL 422.8. Chapter 634 of the Laws of 1988 amended Section 422.8 to clarify the procedures that must be followed once the subject of a report requests the Department to amend or expunge a report. The amendment requires the Department to automatically schedule a fair hearing if the Department denies the request for expungement or if the Department fails, within 90 days of receiving the subject's request for amendment or expungement, to amend or expunge the report as requested. Previously, if the Department failed to grant the subject's request for amendment or expungement within 90 days, the subject had to affirmatively make a separate request for a fair hearing. The amendment also added language to clarify that the agency which investigated the report has the burden of proof at a fair hearing regarding the report(s), and to provide that at such a hearing, a family court finding of abuse or neglect against the subject creates an irrebuttable presumption that the allegation contained in a report is substantiated by some credible evidence. (Effective 9/1/88)

° SSL 424-a - Chapter 634 of the Laws of 1988 amended Section 424-a to require that licensing agencies screen, through the State Central Register, persons over the age of 18 living in the home of an applicant to become an adoptive parent or a group family day care provider. This section of law also was amended to clarify that the burden of proof at a hearing held because the subject was denied employment, licensure or access to children is with the agency that investigated the child abuse or maltreatment report. (Effective 9/1/88)

° SSL 424-c - Section 424-c of the Social Services Law provides procedures that the Department must follow when investigating a report involving a child in residential care. Previously, when the Department received a report involving a child in residential care it had to notify the State and/or local agencies responsible for the child of the existence of the report "including only the name of the child." Chapter 634 of the Laws of 1988 amended Section 424-c to authorize the Department, when investigating a residential care type report, to also notify such agencies of the name of the subject of the report and of any other information which may be necessary to ensure the health and safety of the children in the residential facility. (Effective 9/1/88)


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