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Informational Letter

Transmittal:	11-OCFS-INF-02
To:	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
Issuing Division/Office:	Strategic Planning and Policy Development
Date:	February 10, 2011
Subject:	Restoration of Parental Rights
Suggested Distribution:	Directors of Services Voluntary Agency Program Directors Adoption Supervisors Foster Care Supervisors Child Welfare Executive and Legal Staff
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Attachments:	Yes
Attachment Available Online:	Yes- The petition (TPR-15) and order (TPR-16) for restoration of parental rights can be found at: http://www.courts.state.ny.us/forms/familycourt/guardianship.shtml

Filing References:

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
			631 and 635-637 FCA; 384-b(3)(a), (g) and (l), (4)(b)- (d), (7) and (13) SSL		

I. Purpose

The purpose of this Informational Letter (INF) is to provide information to local departments of social services (LDSS) and voluntary authorized agencies regarding Chapter 343 of the Laws of 2010, which amends the Family Court Act (FCA) and Social Services Law (SSL) in relation to restoration of parental rights. This law, which went into effect on November 11, 2010, authorizes the Family Court, in narrowly defined circumstances, to restore a birth parent's parental rights after they have been terminated.

II. Background

The Adoption and Safe Families Act (ASFA) requires states to file a petition to terminate parental rights and concurrently identify and approve a qualified adoptive resource on behalf of children who have been in foster care for 15 of the last 22 months, with limited exceptions. The intent of ASFA was to improve permanency for children and reduce long-term foster care placements. The primary goal of a termination of parental rights is to provide children who have spent a long time in foster care with the opportunity to achieve a permanent legal relationship with another adult. For many children, termination of parental rights leads to successful adoption by a relative or non-relative adoptive resource. However, for some children, particularly older children, the goal of achieving a permanent legal connection to an adult through adoption becomes unattainable, leaving them legal orphans.

In New York State, when a child is 14 years old or older, he or she can make a decision to not pursue adoption and instead focus on preparation for independent living. At the same time, there is a recognition that children who have a significant connection to an adult generally fare better. Studies of youth who leave foster care without a safe, permanent family reveal consistently negative life outcomes. In some cases, older children who are freed for adoption who do not have a permanency resource continue to

maintain a relationship with their birth parent(s) after the termination. This bond can strengthen over time, and the birth parent(s) may have overcome the problems underlying the reasons for the termination of their parental rights. In some circumstances, a birth parent whose parental rights were previously terminated may now be an appropriate permanency resource for these older children who do not have a goal of adoption and do not have other permanency resources.

This amendment to permit the restoration of parental rights in certain circumstances provides a solution to the ongoing problem confronting children who are not able to find an adoptive home after the rights of their birth parent(s) have been terminated. The law is similar to legislation enacted in California in 2005 (Chapter 634; Assembly Bill 519) and Washington in 2007 (Laws of 2007, Chapter 413) to restore birth parents' parental rights. This new law adds to the FCA a new Part 1-A, entitled "Modification of Disposition; Restoration of Parental Rights." Under this addition to the FCA, with the consent of the respondent in the original termination of parental rights proceeding, as well as that of the child, a petition to restore parental rights may be filed provided if:

- the child is 14 years of age or older;
- at least two years have elapsed since the issuance of the order transferring guardianship and custody of the child;
- the original adjudication terminating parental rights was not based upon severe or repeated child abuse; and
- the child is under the jurisdiction of the Family Court, has not been adopted, and has a permanency goal other than adoption.¹

The consent of the agency to which guardianship and custody had been committed must be obtained, unless the court finds that such consent was withheld without good cause. The court is authorized to grant the petition where clear and convincing proof establishes that restoration of parental rights would be in the child's best interests. A restoration will, in effect, revoke the disposition transferring guardianship and custody of the child, but leave in place the fact-finding upon which the termination of parental rights adjudication had been based.

In addition, the court has the authority to grant the restoration of parental rights petition conditionally. This option would retain guardianship and custody of the child with the agency, but authorize the child to either visit or reside with the birth parent on a trial discharge for a period of up to six months, during which time the agency is directed to supervise the family and to develop a reunification plan with appropriate transitional services. This provides an opportunity for the court to determine if restoring full permanent parental rights is in the child's best interests. If this temporary restoration

¹ FCA § 635

proves successful and in the child's best interests, the court may make it final at the end of the designated period and transfer guardianship and custody at that time to the birth parent. If, however, the child was removed from the birth parent during the designated period by reason of abuse or neglect, the court may terminate the trial discharge, dismiss the restoration petition, and direct the agency that retains guardianship and custody to make efforts to find an alternate permanency plan for the child.

III. Program Implications

A proceeding to modify the disposition order of commitment of guardianship and custody to restore parental rights may be originated by the filing of a petition by the child's attorney, by the agency or individual to whom guardianship and custody of the child had been committed, or by the respondent birth parent(s) in the termination of parental rights proceeding. This modification petition must be served upon these same parties, as well as the attorney(s) who represented the respondent birth parent(s). A certified copy of the order committing guardianship and custody must be attached to the petition to modify. Upon the filing of the modification petition, the court may cause a summons to be issued to the child, the agency or individual to whom guardianship and custody of the child had been committed, and the respondent birth parent(s) in the termination of parental rights proceeding. The petition is filed before the court that exercised jurisdiction over the most recent permanency proceeding involving the child and is assigned, whenever practicable, to the family court judge who presided over that last proceeding or the proceeding to terminate the parental rights. In addition, when possible, the child should be represented by the same attorney(s) that represented him or her at the most recent permanency proceeding, and the birth parent(s) should be represented by the attorney(s) that represented them at the termination of parental rights proceeding.

The petitioner will have the burden of proof by clear and convincing evidence that:

- restoration of the parental rights is in the child's best interests;
- the requirements of the FCA § 635 (see page 2 of this document) have been met; and
- all of the parties and the child have consented, or if the petitioner in the proceeding in which guardianship and custody were committed fails to consent, it was without good cause.

The court may order one of the following dispositions on this modification petition, and must state on the record, the reason(s) for its disposition of the petition:

Petition Granted

The court may grant the petition, modify the order of disposition from the termination of parental rights proceeding, and transfer guardianship and custody of the child to the birth parent(s). However, it should be noted that in this circumstance, the findings of fact that formed the basis for the termination of parental rights remain.

Petition Dismissed

The court may dismiss the petition, in which case the previous guardianship and custody of the child to the authorized agency or individual continues and the child's permanency hearing is required to be held as scheduled.

Petition Granted Conditionally

The court may grant the petition conditionally for a designated period of time of up to six months, during which the guardianship and custody of the child remain with the LDSS or authorized agency while the child either visits with or is placed on trial discharge with the birth parent(s). If the petition is granted conditionally, the LDSS or agency will be directed by the court to supervise the birth parent(s), develop a reunification plan and provide appropriate transitional services to the family, and report to the parties, attorney for the child and the court on the progress at least 30 days in advance of the expiration of the designated trial period. In this circumstance, the court will schedule a proceeding to be heard prior to the expiration of the designated conditional period, and at that time, will determine whether to grant the petition permanently transferring guardianship and custody to the birth parent, or dismiss the petition. If the child is removed from the custody of the birth parent(s) prior to the expiration of the designated trial period by reason of a report of suspected child abuse or maltreatment, the court will schedule a proceeding on notice to the parties and attorney for the child, at which the court may terminate the trial discharge and may dismiss the petition to modify the disposition. If the modification petition is dismissed, the previous guardianship and custody of the child to the authorized agency or individual continues and an alternate permanency plan will need to be made.

The new Petition for Modification of Order of Disposition to Restore Parental Rights (Form TPR-15) and Order Upon Petition to Modify an Order of Disposition to Restore Parental Rights (Form TPR-16) can be found on the New York State Unified Court System website at: <http://www.courts.state.ny.us/forms/familycourt/guardianship.shtml>

Please Note: Children who are 18 years of age or older must consent to remain in care beyond their 18th birthday. They may also decide to leave the custody and guardianship of an LDSS or authorized agency at any time to return to their birth parent.

Best Practice Guidelines

Assessment of Cases

When doing permanency planning for children 14 and over whose case meets the requirements of FCA § 635 (see page 3 of this INF), caseworkers should assess whether or not a plan to restore parental rights to one or both parents is in the best interests of the child. This assessment should include:

- the relationship between the child and the parent,
- the child's attitude regarding the termination,
- whether there are other appropriate permanency plans for the child,
- the grounds, circumstances and/or conditions that led to the termination of parental rights,
- the type and extent of the abuse or neglect that lead to placement,
- the status of the parent's rehabilitation (if applicable), and
- the ability of the parent to meet the child's needs.

Discharge Planning

A child's move out of foster care can be as significant as the move into care. Though the child may be excited about being reunified with his/her parent, there may also be a sense of fear and uncertainty. The child and family may have changed during the time of placement. In addition, the child may have formed new relationships with foster parents and other caretakers, and these relationships may add to conflicting feelings about leaving care. It will be very important for the caseworker to assist the child with processing these feelings and support the child throughout the discharge process. The caseworker may encourage the parent(s) to allow the child to continue some form of contact with the former foster parents or other individuals important to the child if it is felt this would be in the child's best interests. Maintaining connections can make the transition smoother, especially if the foster family and parent have a positive relationship. The foster family may also provide information to the parent(s) regarding the child's current day-to-day functioning and needs.

The parent may also have fears in regard to the discharge, especially if there is not a period of visitation or trial discharge. If the restoration of parental rights is granted conditionally, there will be a period of time of up to six months prior to a final discharge, where the child will be visiting or on trial discharge status. During this conditional period, it is critical that the caseworker carefully supervise the visitation or trial discharge and work with the family to develop a transition plan that best supports the return of the child. Caseworkers need to be prepared to provide the court with a report as to the progress of the visitation or trial discharge during the

conditional period, and part of that report should include the transition plan and how anticipated issues will be addressed, if applicable.

In preparation of the child being discharged to the parent, the transition plan should include putting the necessary supports in place. These supports should be assessed on a case-by-case basis and may include the following:

- refer the family for family counseling, as well as individual counseling for the child;
- refer the family and/or child for any supportive services needed, such as substance abuse treatment, parenting classes, medical providers, etc.;
- assist the family with any housing issues and/or obtaining any items needed for the child's return to the home;
- provide the child's medical records, in accordance with 18 NYCRR 441.22 (o);
- assist the family with school enrollment and obtaining the child's educational records, if the child will be changing schools when the child joins his or her family;
- refer the family to any necessary assistance providers such as temporary assistance, food stamps, or Medicaid, and provide needed verification when the child joins his or her family; and
- provide the family with information regarding available preventive services, if appropriate.

Systems Implications

CCRS

The following **new CCRS legal** codes must be used to report the court proceedings to restore parental rights.

- Type of Legal Event (Modifier A):
 - **24** – Article 6 – Restoration of Parental Rights
- Initial hearing (L300) for Article 6 – Restoration of Parental Rights can be reported only when:
 - Child age is >14 and <21
 - Child is free for adoption (L300 activity date is >A499)
 - Hearing disposition (Modifier B) is:
 - 44 – Foster Care Placement to Continue or
 - 46 – Return Child to Parent or
 - 20 – Dismissal or
 - 21 - Adjourned
- Disposition (Modifier C):
 - **84** - Restoration of Parental Rights Plan Conditionally Approved (language pending) (only if Modifier B is 44)
 - **85** - Restoration of Parental Rights of Both Parents Approved (only if Modifier B is 46)

- **86** - Restoration of Parental Rights of One Parent Approved (only if Modifier B is 46)

The following **new** Adoption activity will be system generated when parental rights are restored: **A549 – Child Not Free Rights Restored**

Please note: Workers need to check CCRS before entering the legal codes related to a restoration modification petition to be sure that it has been two or more years since the date of the A499 and that a modifier of 38 (severe and repeated abuse) or a modifier of 39 (parents deceased) has not been entered in the modifier B field of an entry of the 384-B (TPR) hearing. In addition, the child's CONNECTIONS record should reflect that his or her permanency goal is not adoption, to be consistent with the requirements of eligibility for restoration of parental rights.

These systems instructions are also included in OCFS GIS 11-002.

Record CCRS **movement** codes for trial discharge as usual, if that occurs.

CONNECTIONS

Restoration of Parental Rights Plan Conditionally Approved

The FSS/CCR remains open for the **child only**. Child is still considered free for adoption in the system. The following additional CONNECTIONS reporting requirements are to be addressed to accommodate parental involvement:

- Permanency Hearing Report (PHR) – CCR will generate a Child Only PHR. If a “Family” based PHR is desired or required by court, use the PHR template, located at <http://www.ocfs.state.ny.us/main/legal/legislation/permanency/caseworkerguide.asp>
- Service Plan – There is no capacity to address involved parent(s); this remains a child only service plan.
- Visiting Plan – Involved parent(s) can be added as “Outside Participant.” Once added, the parent(s) can be added to the Visiting Plan Component.
- Progress Notes – Involved parents can be addressed as “Other Participants – Relative.”
- Plan Amendment – CCR generated Plan Amendment has no family oriented component by default. An appropriate component to allow for applicable family (involved parent(s)) assessment and service plan should be added (Status Change/Plan Amendment).

Parental Rights Restored- no further services

If parental rights are restored and no further services are to be provided, the CONNECTIONS case is to be closed.

Parental Rights Restored- services to continue

If parental rights are restored and child welfare services are to continue, the existing FSS/CCR must be closed and a new FSS/CWS stage must be created to accommodate both the child and parent.

WMS

Restoration of Parental Rights Plan Conditionally Approved

The existing WMS case remains open for the child only. If the child is trial discharged, treat as any other trial discharge, by stopping the payment line etc.

Parental Rights Restored- no further services

If parental rights are restored and no further services are to be provided, the WMS case is to be closed.

Parental Rights Restored- services to continue

If parental rights are restored and child welfare services are to continue, the existing WMS case must be closed. Follow local district procedures to create a WMS Services case for the new FSS/CWS stage.

Adoption Album

Children who have been returned to their parent must be removed from the Adoption Album database if they are not already. The worker can change the photo listing status of the child via the change request function in the Adoption Album database, by selecting a removal reason of return to parent. In addition, one of the conditions of eligibility for this modification petition is that the child is 14 years of age or over and no longer has the goal of adoption. Therefore, it is expected that some of these children will probably already be removed from the Adoption Album if they are 14 or over and not consenting to adoption. However, if a conditional trial discharge period results in the child being returned to foster care and it is decided the child's goal will be changed back to adoption, a new Adoption Album referral is to be made to photo list the child if the child consents to adoption.

For step by step instructions regarding the Adoption Album, see the Adoption User Manual that can be found at:

http://ocfs.state.nyenet/adopt/AdoptionAlbumTrainingManual_Oct08.pdf

AMS

AMS will continue to reflect children for whom parental rights have been terminated as free for adoption. Users of AMS need to be aware of the new adoption code created to reflect when parental rights are restored (A549-Child Not Free Rights Restored).

Medicaid

All children who are in the care and custody of an LDSS commissioner and who are citizens or have satisfactory immigration status are categorically eligible for Medicaid. If a child has been finally discharged from foster care due to the birth parents' rights being reinstated, a redetermination of eligibility must be completed. Continuous Coverage and Chafee provisions apply (see DOH GIS 02 MA/012 and OCFS GIS 09-001).

/s/ Nancy Martinez

Issued By:

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