

NEW YORK STATE

DEPARTMENT OF SOCIAL SERVICES

40 NORTH PEARL STREET, ALBANY, NEW YORK 12243



BARBARA B. BLUM
Commissioner

[An Administrative Directive is a written communication to local Social Services Districts providing directions to be followed in the administration of public assistance and care programs.]

ADMINISTRATIVE DIRECTIVE

TRANSMITTAL NO.: 81 ADM-34
[Services]

TO: Commissioners of Social Services

SUBJECT: Child Abuse/Maltreatment Emergency Placements: Notification to Parents of their Right to Request the Family Court to Return the Child(ren)

DATE: July 15, 1981

SUGGESTED DISTRIBUTION:

Child Protective Service Staff
Legal Staff

CONTACT PERSON:

Any questions concerning this release should be directed to Mr. Eric Brettschneider, Associate Commissioner, Office of Program Planning, Division of Services, by calling [-800-342-37]5, extension 49436.

PURPOSE:

The purpose of this letter is to advise local districts of a notification letter which should be given to parents when child(ren) are temporarily, involuntarily removed from their homes under the authority of either Section 1022 or 1024 of the Family Court Act. The notification letter informs parents, guardians, or persons legally responsible of their right, under Section 1028 of the Family Court Act, to apply for a hearing to have their child(ren) returned.

BACKGROUND:

This Department has not required that local districts formally notify parents or guardians of children temporarily removed from their homes of the provisions in Section 1028 for a hearing. The formal notification was not deemed necessary due to the regulated procedure of local districts filing petitions by the next business day (Regulation 432.3-m) and the Family Courts scheduling a fact finding hearing on the petition within three days.

As a result of a lawsuit commenced in the U.S. District Court for the Western District of New York, Ormsby vs. Blum, where a parent was not notified of the provisions of Section 1028 and no Family Court hearing was held for a period exceeding a month after making an emergency removal, the Department has agreed to develop and

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous References
		432.3-m	SSL 417 SSL 424.8 FCA 1021 FCA 1022 FCA 1024 FCA 1026 FCA 1027 FCA 1028		

promulgate a notification letter which local districts are mandated to utilize when children are temporarily removed from their home under the authority of Section 1022 or 1024. These sections only apply when an immediate removal is necessary to avoid imminent danger to a child's life or health.

PROGRAM

IMPLICATIONS: As a result of this directive, all designated Child Protective Service workers (including after-hours staff) will need to carry blank notification letters which should be given to a parent or guardian or left in, or delivered to their home (when the parent is not present) at the time of removal.

Family Courts will need to develop an administrative procedure to process the cut-off portion of the notification letter and schedule a hearing within three Court days.

REQUIRED

ACTION: At the time that a child(ren) is removed from his/her home under the authority of either Section 1022 or 1024 of the Family Court Act, it is required that the parent, guardian or person legally responsible for the child be provided with the form, "Notification of Temporary Removal and Right to a Prompt Hearing". This form should have the blank spaces above the dotted line completed by the Child Protective Service worker and be handed to the parent, if present. The worker should also check whether the removal is being performed under the authority of Section 1022 or 1024 of the Family Court Act.

If the child is removed from his/her home and the parent is not present, the form should be left in a prominent but not public place in the home (i.e., telephone or taped to inside of door). If the temporary placement is initiated from a place away from the child's home and the parent is not present, every effort should be made to deliver the notification form to the parent at the earliest possible time, but certainly within twenty-four hours. Where it is perceived that the personal delivery of the notification form may be dangerous to the safety of the caseworker, the police should be utilized for accompaniment and assistance.

Additionally, as soon as possible, but no later than the next business day, a copy of the "Notification of Temporary Removal and Right to a Prompt Hearing" shall be mailed to the parent and a dated copy kept in the case record.

ADDITIONAL

INFORMATION: The attached "Notification of Temporary Removal and Right to a Prompt Hearing" was prepared for a particular local district so as to provide a visualization of where the names, addresses, and telephone numbers should be placed. It is expected that each local district will retype the notification letter, utilizing the identical format, and prepare the number of copies it expects to need.

A Spanish version of the notification letter will be made available for districts to utilize in those situations which arise where it is known that the parents or guardians have a better comprehension of Spanish than English.

EFFECTIVE DATE: This directive and the attached notification letter becomes effective beginning July 25, 1981.



Norris P. Phillips
Deputy Commissioner
Division of Services

NOTIFICATION OF TEMPORARY REMOVAL
AND RIGHT TO A PROMPT HEARING

TO: John and Mary Doe
16 Main Street
Bath New York 14810

RE: Billy Doe, Cindy Doe,
and Nancy Doe

The children whose names appear above have been temporarily removed from their home because they appear to have been abused or neglected and their removal is deemed necessary to avoid imminent danger to their life or health. This action has been taken under the legal authority of section 1022 or 1024 of the New York Family Court Act. You have a right to a court hearing within three court days if you wish to request the prompt return of your children.

You may apply for a hearing by notifying the Steuben County Family Court Clerk, 123 East Steuben Street, Bath, New York 14810, Tel: (607) 776-6135. You should tell the clerk the following information:

- 1) You are applying for an order returning the children under section 1028 of the Family Court Act;
- 2) The names of the children removed;
- 3) Your name, address, and a telephone number where you can be reached;
- 4) Whether you can afford to pay for a lawyer, and whether you want the court to appoint a lawyer to represent you without charge.

The hearing must be held within three court days after the clerk is notified. The Family Court must order the return of a child unless the court finds after the hearing that either:

- 1) the return of the child presents an imminent risk to the child's life or health, or
- 2) if an abuse or neglect petition has been filed with the court, there is a substantial probability that the child will be found to be abused or neglected and that the final order of disposition will be an order of placement.

You may request a hearing by cutting off, filling out, and delivering the form below to the Family Court Clerk. You should keep the top part of this notice since it contains important information.

DATE: _____

Steuben County Child Protective
Service

County Home
Bath, New York 14810
Tel: (607) 776-7611

Steuben County Family Court Clerk

RE: _____

123 East Steuben Street

Bath, New York 14810

I am requesting a court order returning these children to me as soon as possible. Please schedule a hearing under section 1028 of the Family Court Act within three court days and notify me when and where it will be held. Please be sure that a copy of the charges are given to me in advance of the hearing.

I am financially unable to have a lawyer represent me. I am requesting that a lawyer be assigned to represent me at the hearing without charge.

DATE: _____

Name: _____

Address: _____

Telephone: _____