

NEW YORK STATE

DEPARTMENT OF SOCIAL SERVICES

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Arthur Y. Webb
Acting 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-16
[Services]

TO: Commissioners of Social Services

SUBJECT: Standard of Proof in Proceedings Seeking Termination of Parental Rights

DATE: September 15, 1982

SUGGESTED DISTRIBUTION: Commissioner
Director of Services
Child Protective Services Staff
Child Welfare Staff
Social Services and/or County Attorney
Authorized Agencies

CONTACT PERSON: Inquiries concerning program issues relating to this release should be sent to Mr. H. A. Harkess, Bureau of Policy Planning, 40 North Pearl Street, 11-A, Albany, NY 12243 or by phone toll-free to 1-800-342-3715, Extension 4-9574.

Inquiries concerning legal issues relating to this release should be sent to Mr. John Stupp, Office of Legal Affairs, 40 North Pearl Street, 16-C, Albany, NY 12243 or by phone toll-free to 1-800-342-3715, Extension 3-3272.

I. PURPOSE

The purpose of this release is to inform local social officials, child protective services staff, social services and county attorneys and authorized agencies of the enactment of Chapter 123 of the Laws of 1982 which amends Section 384-b.3(g) of Social Services Law and Section 622 of the Family Court Act to establish the single standard of "clear and convincing proof" as the standard of proof for all termination of parental rights (commitment of guardianship and custody) proceedings.

FILING REFERENCES

Previous INFs/ADMs	Dept. Regs.	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous References
		SSL 384-b FCA 614 FCA 622		

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II. BACKGROUND

Subdivision 4 of Section 384-b of the Social Services Law sets forth five grounds for the termination of a parent's rights and commitment of the guardianship and custody of a child: (a) orphan status without a guardian; (b) abandonment; (c) incapacity of the parent due to mental illness or mental retardation; (d) permanent neglect; or (e) severe or repeated child abuse. Subdivision 3 of Section 384-b sets forth the standard of proof for determining whether an order committing the guardianship and custody of a child should be granted. Prior to the enactment of Chapter 123 of the Laws of 1982, the degree of proof necessary to terminate parental rights on the grounds of orphan status, abandonment or permanent neglect was a fair preponderance of the evidence. The degree of proof necessary to terminate parental rights on the grounds of mental illness, mental incapacity or severe or repeated child abuse was, and continues to be, clear and convincing proof.

Section 614 of the Family Court Act sets forth the elements for originating a proceeding for the commitment of the guardianship and custody of a permanently neglected child. Prior to the enactment of Chapter 123, Section 622 of the Family Court Act provided that the standard of proof which is to be used to determine whether the elements set forth in Section 614 of such Act are present is a fair preponderance of the evidence. These sections parallel the provisions of Section 384-b. 3(g) of the Social Services Law.

These standards prevailed until March 24, 1982. On that date, the U.S. Supreme Court, ruling in the case, Santosky et al v. Kramer, held that, in proceedings to terminate the rights of parents in their natural child on the grounds that the child is permanently neglected, any standard of proof less than "clear and convincing" was insufficient to meet the constitutional tests of due process and fundamental liberties. Santosky et al v. Kramer arose from a termination of parental rights proceeding in Ulster County in which parental rights had been terminated on the ground of permanent neglect. In making its determination, the Ulster County court had applied the "fair preponderance of the evidence" standard, in keeping with the existing provisions of Section 384-b.3(g) of the Social Services Law and Section 622 of the Family Court Act.

The parents appealed this decision on constitutional grounds, arguing that the disruption of the family and the termination of parental rights involves a fundamental liberty and requires that before termination can occur a standard of proof, greater than a fair preponderance of the evidence, must be introduced. Appeals continued to the U.S. Supreme Court and that court agreed with the parents' argument. The U.S. Supreme Court held that the factors to be weighed in the determination to terminate parental rights go beyond the weighing of public and private interests and require the necessity of a judgment concerning the risk to the litigant in case of an error. Because the determination with regard to parental rights is final and therefore contains high risk to a litigant in case of an error, a standard of proof, higher than a fair preponderance of the evidence, must be presented before parental rights in a child may be terminated

on the grounds of permanent neglect. Accordingly, the Supreme Court declared unconstitutional those portions of Section 384-b.3 of the Social Services Law and Section 622 of the Family Court Act which required the introduction of a fair preponderance of the evidence for the termination of parental rights in a child on the grounds of permanent neglect, directed New York State to establish a standard of proof for terminating parental rights on the grounds of permanent neglect which is at least equal in degree to the standard of clear and convincing and returned the Santosky case to the State courts for a new fact finding hearing based on the new standard.

In order to conform New York State Law to the U.S. Supreme Court decision, the Legislature passed and the Governor signed into law Chapter 123 of the Laws of 1982. Chapter 123 amends Section 384-b.3(g) of the Social Services Law and Section 622 of the Family Court Act to establish "clear and convincing proof" as the single standard in all proceedings seeking the termination of parental rights and the commitment of the guardianship and custody of a child.

III. PROGRAM IMPLICATIONS

The grounds for originating termination proceedings have not changed, nor have the required elements in law for establishing these grounds. Only the standard of proof has changed.

Preparation of cases for bringing petitions seeking termination of parental rights must take account of the amended standard. This consideration, however, is secondary to assuring that the evidence presented meets the statutory requirements necessary to establish the particular ground upon which the petition is brought. Courts will likely be very careful in their fact finding hearings in termination proceedings to assure that the evidence presented in proceedings seeking to terminate parental rights to guardianship and custody of a child does more than merely outweigh any evidence presented by the parent(s). The evidence presented must be of sufficient relevance, value, weight and meaning that the court is convinced that the situation or condition may not be seen otherwise than as presented in the termination petition. The "clear and convincing proof" standard is not exactly the same as the "beyond a reasonable doubt" standard of the criminal courts, but it may be seen as that standard's parallel in serious civil proceedings, such as termination of parental rights. Proper adherence in preparing cases in accordance with the required elements of law will generally lead to the meeting of the "clear and convincing proof" standard.

IV. RECOMMENDATION

Local social services officials, child protective services staff, social services and county attorneys and staff of authorized agencies involved



in bringing termination proceedings are advised to review their procedures for developing and/or presenting cases seeking termination of parental rights to ensure that these procedures adequately provide for preparing cases in accordance with the requirements of law and with the "clear and convincing proof" standard.



Norris P. Phillips
Deputy Commissioner
Division of Services



- 1.
2. 1/26/82 Child Returned to Foster Care After Interruption of Care Phillips [Services]
3. 2/24/82 Chapter 284, Laws of 1981 Amendments Affecting Termination of Parental Rights Proceedings Phillips [Services]
4. 3/11/82 Revised HHS Pamphlet, "SSI for the Aged, Blind and Disabled in New York State" Shapiro [Inc.Maint.]
5. 3/12/82 New Child Support Enforcement Legislation/1981 Kelsey [Ch.Supp.Enf]
6. 3/16/82 Revised definition for Protective Services for Adults (PSA) contained in the Statewide Consolidated Services Plan and Part 457 of the Department's regulations Plummer [Ad.Serv]
- 7.
8. 4/8/82 Allocation of WIN Medical Expenditure Funds for the Period October 1, 1981 - September 30, 1982 Shapiro [Inc.Maint.]
- 9.
- 10.
11. 5/17/82 Ambulatory Care for Medicaid Recipients with Mental Illness Schwartz [Med.Asst.]
- 12.
13. 5/25/82 State Supplemental Personal Needs Allowance Program (SS PNA) Shapiro [Inc.Maint.]
14. 8/24/82 Jurisdiction in adption Proceedings Phillips [Services]
15. 8/26/82 Enhancements of the Wage Reporting System Durkin [A&QC]
16. 9/15/82 Standard of Proof in Proceedings Seeking Termination of Parental Rights Phillips [Services]



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