

NEW YORK STATE
 DEPARTMENT OF SOCIAL SERVICES
 40 NORTH PEARL STREET, ALBANY, NEW YORK 12243



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-26
 [Services]

TO: Commissioners

SUBJECT: Termination of Parental Rights Due to Severe or Repeated Abuse

DATE: December 31, 1982

SUGGESTED DISTRIBUTION: Commissioners
 Directors of Services
 All Child Protective Staff
 Social Services and/or County Attorneys

CONTACT PERSON: All inquiries regarding this release should be directed to Mr. Hal Harkess, Bureau of Policy Planning, Division of Services, by calling #1-800-342-3715, Extension 4-9574.

I. PURPOSE

The purpose of this release is to advise social services officials and especially child protective services staff and social services and county attorneys of the provisions of Chapter 739 of the Laws of 1981. Chapter 739 amends subsection 384-b.4 of the Social Services Law to add severe or repeated child abuse as a basis for seeking the termination of parental rights.

II. BACKGROUND

Prior to the enactment of Chapter 739 of the Laws of 1981, abuse of a child was not a statutory ground upon which an authorized agency (including a local social services district) could seek termination of parental rights. As a result, the

FILING REFERENCES

Previous INFs/ADMs	Dept. Regs.	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous References
		SSL 384-b FCA 1035 FCA 1037 FCA 1051 FCA 1052		

DSS-329 (REV. 8/82)

parental rights of parents who have been found to have abused their child could not be terminated as a result of abuse, unless one of the other grounds for commitment of guardianship and custody under Section 384-b of the Social Services Law could be sustained. In Chapter 739, New York State law now provides statutory authority under which a severely or repeatedly abused child may be freed for adoption and parental rights terminated. In establishing this authority, however, Chapter 739 recognizes that single-incident or non-severe cases of child abuse are not in themselves an appropriate basis for such termination. Rather, only the most severe or repeated cases of abuse should become grounds for termination. In addition, the abusive parent(s) must be given notice that repeat adjudications or offenses could result in termination in order to provide the parent(s) with an opportunity to be rehabilitated. Agencies providing for the abused child and/or his parents are required to make diligent efforts to encourage and strengthen the parental relationship, except in cases where to do so may be clearly detrimental to the best interest of the child.

III. PROGRAM IMPLICATIONS

Chapter 739 of the Laws of 1981 establishes, for the first time in New York State law, abuse of a child (including sexual offense) as a ground for seeking commitment of the guardianship and custody of a child and termination of parental rights. These provisions apply to any child in the care of a parent or guardian and not just the child against whom the abuse or sexual offense was directed.

Chapter 739 adds to subsection 384-b.4 of the Social Services Law a new paragraph (e) which provides for the termination of parental rights of any parent or parents who severely or repeatedly abused a child. Initiation of a proceeding on this ground may begin only after the child has been in the care of an authorized agency for a period of one year. Prior to the initiation of termination proceedings, the authorized agency must have made diligent efforts to encourage and strengthen the parental relationship, including efforts to rehabilitate the parent or parents against whom the finding of abuse was entered.

Chapter 739 adds a new subdivision 8 to Section 384-b which defines the terms "severely abused" and "repeatedly abused" and which also establishes the court's dispositional options should the court enter a finding that a child has been either "severely abused" or "repeatedly abused." A "severely abused" child is one that has been found to be an abused child as a result of reckless or intentional acts of the parent committed under circumstances evincing a depraved indifference to human life and which result in serious physical injury as defined in subdivision 10 of Section 10 of the Penal Law. This includes physical injury which creates a substantial risk of death or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

A child is "repeatedly abused" when the child has been adjudicated to be an abused child, as defined in Section 1012 (e)(i) or 1012 (e) (iii) of the Family Court Act and for the purposes of Section 1012 (e)(iii) this child or any other child of the same parent or parents has been adjudicated an abused child within the previous five years. The provisions of the new Section 384-b.8(b) provide that in the case of a finding of abuse based on Section 1012(e) (iii) of the Family Court Act which provides for a finding of abuse based on a sexual offense against a child, only the following felony sex offenses are included in the definition "repeatedly abused": rape in the third degree, rape in the second degree, rape in the first degree, sodomy in the third degree, sodomy in the second degree, sodomy in the first degree, sexual abuse in the first degree and aggravated sexual abuse. Each of these offenses is defined in Section 130 of the Penal Law.

Before a petition based on either of these grounds may be brought, the statute requires that the authorized agency having care or custody of the abused child must make diligent efforts to encourage and strengthen the parental relationship, including efforts to rehabilitate the parent and that such efforts have been unsuccessful and are likely to be unsuccessful in the foreseeable future. However, where an authorized agency can show that these efforts could be detrimental to the best interests of the child, the diligent effort requirement may be waived.

The new subdivision 8 of Section 384-b also provides that following a finding by the court that a child is severely or repeatedly abused according to these definitions, the court shall either (1) commit the guardianship and custody of the child, thereby terminating the parent or parent's rights, pursuant to Section 384-b of Social Services Law or (2) suspend judgment, in accordance with Section 633 of the Family Court Act. Either disposition must be based upon the specific finding, based on clear and convincing, competent, material, and relevant evidence introduced in a disposition hearing, that the best interests of the child require such commitment or suspension.

Chapter 739 also adds certain procedural requirements to the Family Court Act regarding proceedings to determine abuse. Concerning the notice to be given by the court, Chapter 739 requires that when a court issues a summons or a warrant to require a parent to appear, the summons or warrant shall contain a notice which advises the parent that the proceeding to which the summons or warrant relates could lead to a proceeding under the Social Services Law for the commitment of guardianship and custody of the child and that the rights of the parent with respect to said child may be terminated in such a proceeding.

This notice must be given on any summons or warrant in any hearing to determine abuse. Even though the particular proceeding to which the summons or warrant refers may not be one alleging severe or repeated abuse, that proceeding may become the basis for a subsequent proceeding that does. Chapter 739 also adds language to Section 1051 of the Family Court Act relating to the court's orders following a proceeding, requiring a court making a finding of abuse to specify the specific paragraph in Section 1012 (e) of the Family Court Act which is the basis for its finding. If the basis for the finding is that the parent committed or allowed to be committed a sex offense against the child, the court's order of finding shall identify the specific sex offense in accordance with the definitions of Section 130 of the Penal Law.

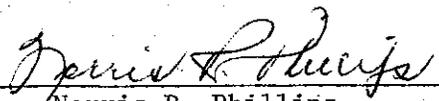
Section 1052 of the Family Court Act, which relates to disposition following an adjudication, has been amended by adding a new subdivision (c). The provisions of this subdivision require that the court, prior to granting an order of disposition following an adjudication of abuse based on Section 1012 (e)(i) of the Family Court Act or on Section 1012 (e) (iii) when such abuse is one of the eight specified sex offenses noted in the definition of "repeatedly abused", shall advise the parent that any subsequent adjudication of abuse or any subsequent finding of one of the enumerated felony sex offenses which arises out of actions of the parent may result in the commitment of the guardianship and custody of the affected child or any other child of the parent, pursuant to Section 384-b of the Social Services Law. In addition to this verbal admonition, Section 1051 also provides that the court's written order in such cases shall contain this same admonition.

IV. RECOMMENDED ACTION

In preparing notices on petitions relating to proceedings to determine abuse, local districts and authorized agencies are advised to be cognizant of the aforementioned provisions. The language of the statute makes it the duty of the court to issue any required summons or warrants and to issue the required orders in findings and dispositions. However, when attorneys of districts or agencies are called upon as officers of the court to prepare such summonses, warrants or proposed findings or orders, they should be advised to insure that these documents comply with these provisions of Chapter 739 of the Laws of 1981.

V. ADDITIONAL INFORMATION

Chapter 739 became effective on October 25, 1981.


Norris P. Phillips
Deputy Commissioner
Division of Services

