

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



CESAR A. PERALES
 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.: 83 INF-22
 [Family & Children Services]

TO: Commissioners of Social Services

SUBJECT: Stay of Order for Return of Child
 in Child Protective Proceedings

DATE: December 30, 1983

SUGGESTED DISTRIBUTION:
 Commissioner
 Director of Services
 All Child Protective Services Staff
 County and/or Social Services Attorney(s)
 Authorized Agencies Serving Child Protective
 Services Cases

CONTACT PERSON: Inquiries regarding legal issues relating to this release should be addressed to Mr. John Stupp, Associate Counsel, Office of Legal Affairs, 40 North Pearl Street, Room 16-C, Albany, New York 12243 or by phone toll-free to 1-800-342-3715, extension 3-3272. Inquiries regarding policy or programmatic issues should be addressed to Mr. H. A. Harkess, Senior Social Services Planning Specialist, Bureau of Policy Planning, Division of Family and Children Services, 40 North Pearl Street, Albany, New York 12243 or by phone toll-free 1-800-342-3715, extension 4-9574.

I. PURPOSE

The purpose of this release is to inform local districts, attorneys and agencies caring for child protective services cases of the provisions of Chapter 232 of the Laws of 1983, which amends Section 1112 of the Family Court Act. This law grants an automatic stay of any order issued pursuant to Article 10 of the Family Court Act which would return a child to his or her parent(s) or guardian if the child had previously been remanded or placed by the court with some other person.

FILING REFERENCES

Previous INFs/ADMs	Dept. Regs.	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous References
		FCA 1112		Chapter 232 Laws of 1983

II. BACKGROUND

When a child has been removed from the home of his parent or guardian, pursuant to a proceeding under Article 10 of the Family Court Act and the child has been remanded or placed by the Family Court with someone other than that parent or guardian, the child cannot be returned to his or her parent or guardian unless the court issues an order which directs that the child be returned to such parent or guardian. It is this order of return which is the subject of Chapter 232 and the provision for automatic stay.

Under the provisions of Section 1112 of the Family Court Act, an order for the return of a child, constituting as it does an order of disposition, is appealable. Such an appeal, however, requires the filing of motion papers with the Appellate Division of the Supreme Court. When the order of disposition to return the child is issued late in the day, it is difficult if not impossible to file the necessary motion papers before the close of business that day. It is possible that the child would have to be returned to the parent or guardian despite the appellant's belief that the order was in error and the child was in danger.

Section 1061 of the Family Court Act contains a provision whereby the Family Court issuing the order for the return of the child may order a stay pending an appeal by any party who was a party to the proceeding which gave rise to the order. This authority to grant a stay, however, is discretionary and not every court issues such a stay even where a party to the proceeding indicated it would seek an immediate appeal. This is especially difficult in situations where an interested party, a local social services district, an authorized agency or a child's law guardian feels there is an imminent risk of danger that has been ignored or dismissed in the Family Court's order for the return of the child. Without the granting of a stay to allow the party to appeal, the child would have to be returned to the parent or guardian.

As a compromise to those situations and to allow adequate time for the filing of necessary appeals and requests for stays in such situations, while still providing protection for the rights of the parent or guardian who had applied for or received the court's order for the return of the child, the Legislature passed and the Governor signed into law Chapter 232 of the Laws of 1983, effective June 3, 1983.

Chapter 232 renumbers the existing appeals provisions of Section 1112 of the Family Court as paragraph (a) and adds a new paragraph (b) to Section 1112 which reads as follows:

"b. In any proceeding pursuant to article ten of this act where the family court issues an order which will result in the return of a child previously remanded or placed

by the family court in the custody of someone other than the respondent, such order shall be stayed until five p.m. of the next business day after the day on which such order is issued unless such stay is waived by all parties to the proceeding by written stipulation or upon the record in family court. Nothing herein shall be deemed to affect the discretion of a judge of the family court to stay an order returning a child to the custody of a respondent for a longer period of time than set forth in this subdivision."

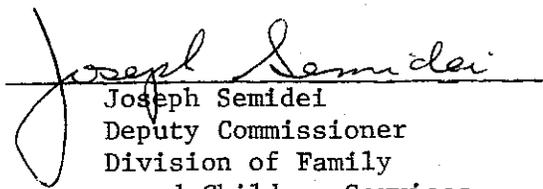
III. IMPLICATIONS

The provisions contained in Chapter 232 make the provision of a stay until 5 P. M. of the next business day a necessary part of an order to return a child previously remanded or placed by the Family Court pursuant to a proceeding under Article 10 of the Family Court Act, unless all parties to the proceeding by either a written stipulation or a statement on the record in the proceeding specifically waive the right to the stay. If anyone of the parties does not waive this right, the stay must become part of the order and the child cannot be returned until 5 P. M. of the next business day of the court. In situations where the order is issued on a Friday and the next business day of the court is Monday, the stay is in effect until 5 P. M. Monday. The court retains the discretion to grant a stay that extends beyond the period authorized by Section 1112(b). It may not, however, except in the case of the specific waiver noted above, reduce or deny the stay to less than the period authorized by Section 1112(b).

This authority to grant a stay will give any party to the proceeding who wishes to do so ample opportunity to prepare and file necessary motion papers for an appeal and an additional stay with the Appellate Division of the Supreme Court.

IV. RECOMMENDATIONS

Child protective services staff, agency staff and attorneys who are involved in preparing or participating in proceedings under Article 10 of the Family Court Act should be made aware of Chapter 232 and its provisions.



Joseph Semidei
Deputy Commissioner
Division of Family
and Children Services

THE UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535



MEMORANDUM FOR THE DIRECTOR
FROM: SAC, NEW YORK
SUBJECT: [Illegible]



RE: [Illegible]

DATE: [Illegible]

