

NEW YORK STATE

DEPARTMENT OF SOCIAL SERVICES

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CESAR A. PERALES  
Commissioner



**INFORMATIONAL LETTER**

TRANSMITTAL NO: 87 INF-59

TO: Commissioners of Social Services

DIVISION: Family and Children's Services

SUBJECT: Chapters 67, 75, 97, 129, 160, 162, 443, 469, 478, 760, 776 and 793 of the Laws of 1987: Amendments to Article 10 of the Family Court Act

DATE: October 28, 1987

SUGGESTED DISTRIBUTION: Directors of Services  
Child Protective Services Staff  
Legal Staff  
Staff Development Coordinators

CONTACT PERSON: Any questions about this release should be directed to Fred Cantlo, Regional Director, Metropolitan Regional Office, telephone 212-488-3845; John O'Connor, Regional Director, Albany Regional Office, telephone 518-432-2751; Jack Klump, Regional Director, Syracuse Regional Office, telephone 315-428-3230; Frank Petrus, Regional Director, Rochester Regional Office, telephone 716-238-8201; or Karen Schimke, Regional Director, Buffalo Regional Office, telephone 716-847-3145.

The purpose of this letter is to inform local districts of the provisions of Chapters 67, 75, 97, 129, 160, 443, 469, 478, 760, 776 and 793 of the Laws of 1987 which amended several sections of Article 10 of the Family Court Act pertaining to child abuse and neglect proceedings.

**FILING REFERENCES**

Previous ADMs/INFs	Releases Cancelled	Department Regs.	Social Services Law and Other Legal References	Manual References	Miscellaneous Reference
			FCA 1015(a); 1015-a; 1022(c) &(e); 1023; 1024(b)(iii); 1026(c); 1027; 1028; 1029(a); 1035(d)&(e); 1038-a; 1051(a); 1055(b)(i); 1055(b)(v)		Child Protective Services Program Manual - IV J.

DSS-329 (Rev. 6/87)

The following is a description of each of the above-mentioned sections of the Family Court Act which were amended by the Laws of 1987.

- FCA 1015(a). Chapter 97 of the Laws of 1987 amended Section 1015(a) of the Family Court Act to provide that, for the purposes of establishing venue in child protective proceedings, "residence" shall include a shelter for homeless persons.

This amendment clarifies the authority of the Family Court to consider child abuse or neglect petitions involving parents and children temporarily housed within the county in which the Court is located. Chapter 97 became effective on June 8, 1987.

- FCA 1015-a. Chapter 760 of the Laws of 1987 added a new Section 1015-a of the Family Court Act which specifies that the court may order a social services official to arrange or provide for services or assistance to the child and his or her family to facilitate the protection of the child, the rehabilitation of the family and, as appropriate, the discharge of the child from foster care. This provision applies to any proceeding under Article 10. Such orders may only require services to be authorized or required to be made available pursuant to the local district Consolidated Services Plan. If the court finds that the local social services official has violated such a court order, the court would have the power, pursuant to Section 753 of the Judiciary Law, to fine and/or imprison the social services official who violated the order.

This amendment will ensure that needed services are provided to families during any stage of a child protective proceeding and encourages Family Court judges to take a more active role in ensuring that appropriate services are provided to children and families involved in the child protective proceedings. Chapter 760 became effective August 7, 1987.

- FCA 1022(c) and ((e); 1023. Chapter 776 of the Laws of 1987 amended Sections 1022 and 1023 of the Family Court Act to permit the court to authorize the provision of services or assistance deemed necessary to protect the life and health of the child before the filing of the petition. Such order is limited to services or assistance authorized or required to be made available pursuant to the local district's Consolidated Services Plan. The court may make such an order without requiring the removal of the child. Furthermore, any person authorized to originate an Article 10 proceeding may apply for, or the court on its own motion may issue, an order for the provision of emergency medical services or services or assistance.

The purpose of this amendment is to protect children during the time period before a child protective petition can be filed by permitting the Court to order the provision of needed services and assistance. Chapter 776 became effective August 7, 1986.

° FCA 1024(b)(iii). Section 1024(b)(iii) of the Family Court Act requires local districts to provide, coincident with the emergency removal of a child without a court order, written notice to the parent of the right to apply to the court for the return of his/her child. Chapter 162 of the Laws of 1987 amended Section 1024 (b)(iii) to require the local social services official to also file an affidavit with the clerk of the Family Court stating that the local social services official has provided the notice to the parent that his/her child has been taken into protective custody. The affidavit must be filed with the clerk within twenty four hours of serving such notice to the parent.

This amendment ensures that a person legally responsible for a child removed from a home on an emergency basis in a child abuse case, is advised of the right to apply to the Family Court for return of the child. The notification of the right to apply for the return of the child must be in writing. Chapter 162 became effective October 18, 1987.

° FCA 1026(c). Section 1026(c) of the Family Court Act provides that where a child is removed from his/her home and the child is not returned to the parent, or if CPS concludes it would be appropriate to file a petition alleging that a child has been abused or neglected, the local district must forthwith file an Article 10 child abuse or neglect petition with the Family Court. Such a petition is filed for the purposes of determining whether the child has been abused or neglected and whether the child and/or family is in need of court ordered placement or services. Chapter 478 of the Laws of 1987 amended Section 1026(c) to permit the Family Court to order an extension of care for up to three court days after the date of removal upon the showing of good cause by CPS. This amendment places a limit of three court days for the filing of the petition. CPS is required to file the Article 10 petition forthwith or immediately petition the court for an extension of the emergency removal. This extension may be granted only upon good cause shown and may be for no more than three business days after the initial removal.

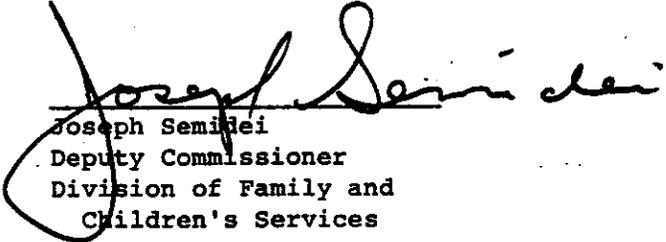
The purpose of this amendment is to establish specific timeframes for the filing of a child abuse or neglect petition under Article 10 of the Family Court Act in Family Court after the emergency removal of a child from his or her home by a child protective services agency. Chapter 478 becomes effective November 27, 1987.

- FCA 1027 and 1028. Section 1027(a) of the Family Court Act permits any person who may originate a proceeding under Article 10 to apply for, or the court on its own motion may order, a preliminary hearing at any time after a petition is filed to determine whether the child's interests require protection pending a final order of disposition. Section 1028 of the Family Court Act permits the parent or other person legally responsible for the care of a child temporarily removed from the home to apply for a hearing to determine whether the child should be returned. Chapter 469 of the Laws of 1987 amended Sections 1027(a) and 1028 to permit law guardians also to apply for a preliminary hearing or a hearing to return a child. Prior to this amendment, law guardians were not permitted to apply for a hearing since technically children (through the law guardian) are not parties in an Article 10 proceeding. This amendment provides law guardians with the authority to request a preliminary hearing pursuant to Section 1027 and 1028 of the Family Court Act. This provision became effective July 27, 1987.
- FCA 1029(a). Chapter 67 of the Laws of 1987 amended Section 1029(a) of the Family Court Act to permit, in any case where a petition has been filed and a law guardian appointed, such law guardian to apply for a temporary order of protection. This amendment became effective May 5, 1987.
- FCA 1035(d) and (e). Section 1035 of the Family Court Act grants a non-respondent parent status as an interested party intervenor in Child Protective proceedings under Article 10 of the Family Court Act and affords the parent the right to appear and participate for the purposes of seeking temporary and permanent custody of the child. Chapter 443 of the Laws of 1987 amended Sections 1035(d) and (e) to clarify the extent of the non-respondent parent's rights to participate in the Child Protective proceedings, limiting that participation to arguments and hearings at the fact-finding stage insofar as they affect the temporary custody of the child and to all phases of a dispositional hearing. Chapter 443 became effective July 27, 1987.
- FCA 1038-a. Chapter 793 of the Laws of 1987 added a new Section 1038-a to the Family Court Act to allow the court to order a respondent to provide nontestimonial evidence but only if the court finds probable cause that the evidence is reasonably related to establishing the allegations in a petition. Such an order may include, but not be limited to, provision for the taking of samples of blood, urine, hair or other materials from the respondent's body in a manner not involving an unreasonable intrusion or risk of serious physical injury to the respondent. Chapter 793 became effective August 7, 1987.
- FCA 1051(a). Section 1051(a) of the Family Court Act currently permits the court to enter an order finding that a child

is an abused or neglected child if all parties consent to such a finding. Chapter 160 of the Laws of 1987 amended Section 1051(a) to require the consent of the law guardian as well as "all parties". This amendment was necessary since children technically (through their law guardians) are not parties in an Article 10 proceeding so the consent of the law guardian was not mandated. Chapter 160 became effective June 29, 1987.

- FCA 1055(b)(i). Section 1055(b)(i) of the Family Court Act specifies that placements may be for an initial period of eighteen months and extensions may be made for one year in child abuse and neglect proceedings. Chapter 129 of the Laws of 1987 amended Section 1055(b)(i) to clarify that the Family Court can order placement for a child for an initial period of up to eighteen months, and less than eighteen months if deemed appropriate and necessary. In addition, the Family Court, where deemed necessary, may order an extension of the placement for periods of up to one year or less. This amendment ensures that in each instance the length of the initial placement or an extension of placement to be ordered would be determined by the individual needs of each child. Chapter 129 became effective July 15, 1987.
- FCA 1055(b)(v). Chapter 75 of the Laws of 1987 added a new paragraph (v) to Section 1055(b) of the Family Court Act to require the court, in any order of placement or extension of placement, to state the court's findings supporting the length of placement ordered. Chapter 75 became effective September 19, 1987.

The Child Protective Services Program Manual will be updated to provide information regarding those provisions which will affect CPS staff actions to effect necessary protective measures, to obtain adjudication of abuse or neglect, and to obtain services. These provisions are FCA 1022 and 1023 concerning the authorization of services or assistance deemed necessary before the filing of a petition; FCA 1024 concerning the filing of an affidavit by social services within 24 hours of providing notice to parent; FCA 1026 concerning the ordering of extension by Family Court of the filing of a petition; and FCA 1055 concerning the length of placements ordered by Family Court.

  
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