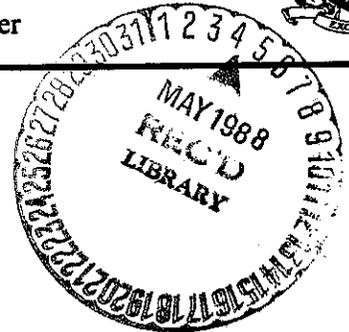


# ADMINISTRATIVE DIRECTIVE

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES  
40 North Pearl Street  
Albany, New York 12243  
Cesar A. Perales, Commissioner



TRANSMITTAL NO: 88 ADM-19

DATE: April 29, 1988

DIVISION: Family and Children Services

TO: Commissioners of Social Services  
Directors of Authorized Agencies

SUBJECT: Limitation of Service by Publication  
in 358-a Proceedings

SUGGESTED DISTRIBUTION: Child Welfare Executive and Supervisory Staff  
Legal Staff  
Foster Care Staff  
Adoption Staff  
Staff Development Coordinators

CONTACT PERSON: Fred Cantlo, Director, Metropolitan Regional Office, (212) 488-3485;  
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Jack Klump, Director, Syracuse Regional Office, (315) 428-3235.

### FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Department Regs.	Social Services Law and Other Legal References	Manual References	Miscellaneous Reference
87 ADM-8			SSL 358-a 384 384-a CPLR 316 FCA 154-a		

### I. Purpose

The purpose of this directive is to advise you that Chapter 823 of the Laws of 1987 has amended Section 358-a of the Social Services Law, to allow a family court judge to order service by publication with limits if he or she determines such service is necessary.

### II. Background

Section 358-a of the Social Services Law requires a petition be filed with family court once it is determined that a child is likely to remain in care for a period in excess of 30 consecutive days. The purpose of the petition is to approve the instrument executed pursuant to the provisions of Section 384-a of the Social Services Law (voluntary placement), 502 of the Executive Law (Division for Youth) and 384 of the Social Services Law (surrender).

Prior to the new amendment of the Social Services Law, a judge could direct only that the notice of the proceeding and a copy of the petition be served on the parents or guardian of the child, or other designated persons.

In 1986, Chapter 811 was enacted allowing publication of a summons with notice of petitions terminating parental rights under Section 617 of the Family Court Act.

### III. Program Implications

Chapter 823 of the Laws of 1987 provides an additional method of notification by adding a new section (b) to 358-(a)(4) of the Social Services Law. This new section allows a family court judge to determine and direct service by publication if necessary, but limits publication of the entire petition. This means that in a 358-a judicial proceeding, if service of the petition and notice of the proceeding cannot be personally served on the parents or a guardian of the child, a social services official can now be directed by the court to provide service by publication. Such service must comply with the provisions of the new legislation which prohibits publication of the entire petition and specifies what must be stated in the notice to be published.

Usually, before a judge will consider service by publication, the agency must demonstrate that reasonable efforts have been made to locate and personally serve the person(s) with the petition and the notice of the proceedings.

#### IV. Required Action

When a family court judge orders service by publication in a 358-a proceeding, the local social services official or authorized agency must provide such service in accordance with the following stipulations:

1. Pursuant to Section 316 of the Civil Practice Law on service by publication, the summons and notice must be published together to designated persons within thirty days after the order is given. The service is complete on the twenty-eighth day after the day of publication.
2. Publication must occur in those newspapers designated in the court order as likely to give notice to the parent(s). However, a single publication in one newspaper designated in the court order is sufficient.
3. The whole petition must not be published. Such petition in its entirety, however, must be delivered to the person summoned at the first court appearance if such person appears.
4. The notice to be published with the summons must state:
  - a. Date, time, place and purpose of the proceedings.
  - b. Petitions under 384 of the Social Services Law (commitment by surrender) must also state: "failure to appear may result, without further notice, in transfer of custody and guardianship of the child to a social services official in the proceeding."
  - c. Petitions under 384-a of the Social Services Law (transfer of care and custody) must also state: "failure to appear may result, without further notice, in the transfer of care and custody of the child to a social services official in this proceeding."

Please note there is some difference in the required wording for 384 and 384-a petitions.

#### V. Systems Implications

None

VI. Additional Information

1. The provisions of this new legislation also pertain to proceedings initiated to place a child with the Division for Youth under Section 502 of the Executive Law. Such petitions must also state: "failure to appear may result, without further notice, in placement of the child with the Division for Youth in this proceeding."

2. During the period of notice by publication, if the person's whereabouts become known the petition should be delivered to the person at the earliest opportunity.

3. Chapter 823 of the Laws of 1987 is attached for your information.

VII. Effective Date

This directive is effective May 2, 1988, retroactive to August 7, 1987 the effective date of Chapter 823 of the Laws of 1987.



Joseph Semidei  
Deputy Commissioner  
Division of Family  
and Children Services

# STATE OF NEW YORK

S. 2891--B  
Cal. No. 983

A. 3978--B

1987-1988 Regular Sessions

## SENATE—ASSEMBLY

February 26, 1987

IN SENATE -- Introduced by Sen. COOK -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services -- reported favorably from said committee and committed to the Committee on Child Care -- reported favorably from said committee, ordered to first report, amended on first report, ordered to second report, and to be reprinted as amended, retaining its place in the order of second report -- ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

IN ASSEMBLY -- Introduced by M. of A. SALAND -- read once and referred to the Committee on Social Services -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the social services law, in relation to dependant children in foster care

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Subdivision four of section three hundred fifty-eight-a of
- 2 the social services law, as amended by chapter seventy-eight of the laws
- 3 of nineteen hundred seventy-eight, is amended to read as follows:
- 4 (4) Notice. (a) Upon the filing of a petition pursuant to this sec-
- 5 tion, the family court judge shall direct that service of a notice of
- 6 the proceeding and a copy of the petition shall be made upon such per-
- 7 sons and in such manner as the judge may direct. If the instrument exe-

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD07186-04-7

1 cuted by the parent, parents or guardian of a child consents to the  
2 jurisdiction of the family court over such proceeding, and waives ser-  
3 vice of the petition and notice of proceeding, then the family court  
4 judge may, in his discretion, dispense with service upon the consenting  
5 parent, parents or guardian, provided, however, that a waiver of service  
6 of process and notice of the proceeding by a parent or guardian who has  
7 transferred the care and custody of a child to an authorized agency,  
8 pursuant to section three hundred eighty-four-a of this chapter, shall  
9 be null and void and shall not be given effect by the court. Notice to  
10 any parent, parents or guardian who has not executed the instrument  
11 shall be required.

12 (b) In the event the family court judge determines that service by  
13 publication is necessary and orders service by publication, service  
14 shall be made in accordance with the provisions of rule three hundred  
15 sixteen of the civil practice law and rules, provided, however, that a  
16 single publication of the summons or other process with a notice as spe-  
17 cified herein in only one newspaper designated in the order shall be  
18 sufficient. In no event shall the whole petition be published. The peti-  
19 tion shall be delivered to the person summoned at the first court ap-  
20 pearance pursuant to section one hundred fifty-four-a of the family  
21 court act. The notice to be published with the summons or other process  
22 shall state the date, time, place and purpose of the proceeding.

23 (i) If the petition is initiated to transfer custody and guardianship  
24 of a child by an instrument executed pursuant to the provisions of sec-  
25 tion three hundred eighty-four of this chapter, the notice to be pu-  
26 blished shall also state that failure to appear may result, without fur-  
27 ther notice, in the transfer of custody and guardianship of the child to  
28 a social services official in this proceeding.

29 (ii) If the petition is initiated to transfer care and custody of a  
30 child by an instrument executed pursuant to the provisions of section  
31 three hundred eighty-four-a of this chapter, the notice to be published  
32 shall also state that failure to appear may result, without further not-  
33 ice, in the transfer of care and custody of the child to a social ser-  
34 vices official in this proceeding.

35 (iii) If the petition is initiated to place a child with the division  
36 for youth by an instrument executed pursuant to section five hundred two  
37 of the executive law, the notice to be published shall also state that  
38 failure to appear may result, without further notice, in placement of  
39 the child with the division for youth in this proceeding.

40 § 2. This act shall take effect immediately.