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 | OCFS ADMINISTRATIVE DIRECTIVE |  
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TRANSMITTAL: 98 OCFS ADM-1

TO: Commissioners of  
 Social Services

OFFICE: Strategic Planning  
 and Policy  
 Development

DATE: October 1, 1998

SUBJECT: Provisions, Procedures and Mechanisms for Complying with  
 Certain Federal Child Abuse Prevention and Treatment Act  
 Requirements

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 SUGGESTED

DISTRIBUTION: | Directors of Services  
 | Legal Staff  
 | Child Welfare Supervisors  
 | Staff Development Coordinators

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ATTACHMENTS: | None

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
		18 NYCRR Parts 428 430	P.L. 104- 235, CAPTA Amendments SSL 384-b FCA 1055 DRL 112-a		

I. PURPOSE

The purpose of this directive is to advise social services districts of two requirements contained in the (federal) Child Abuse Prevention and Treatment Act (CAPTA) and to provide guidance for complying with such requirements.

II. BACKGROUND

CAPTA was reauthorized and amended by Public Law 104-235 on October 3, 1996. There are several new requirements for states contained within the reauthorization of CAPTA, most of which do not take effect until June 1999. The subject of this directive is two federal eligibility requirements that take effect on October 3, 1998. The State must have "provisions, procedures and mechanisms:"

1) for the expedited termination of parental rights in the case of any infant determined to be abandoned under State law; and

2) that assure that the State does not require reunification of a surviving child with a parent who has been found by a court of competent jurisdiction--

a) to have committed murder of another child of such parent;

b) to have committed voluntary manslaughter of another child of such parent;

c) to have aided or abetted, attempted, conspired, or solicited to commit such murder or voluntary manslaughter; or

d) to have committed a felony assault that results in the serious bodily injury to the surviving child or another child of such parent.

III. PROGRAM IMPLICATIONS

There are existing State statutory and regulatory provisions to ensure compliance with these requirements. In the area of expediting termination proceedings for abandoned children, Section 384-b.5(a) of the Social Services Law (SSL) defines a child to be "abandoned" when the child's "parent evinces an intent to forego his or her parental rights and obligations as manifested by his or her failure to visit the child and communicate with the child or agency, although able to do so and not prevented or discouraged from doing so by the agency." Moreover, the parent's ability to visit and communicate shall be presumed, in the absence of evidence to the contrary.

Section 430.12(d)(2)(i) of Title 18 of the New York Codes Rules and Regulations requires the filing of a termination petition on the grounds of abandonment within 60 days of the completion of an assessment and services plan that documents such failure to visit and communicate with the child.

SSL 384-b.5(b) elaborates further by clarifying that the subjective intent of the parent, without evidence demonstrating such intent, shall not preclude a finding that the child has been abandoned. A showing of diligent efforts to encourage the parent to visit or communicate with the child is not required by the authorized agency. SSL 384-b.4(b) allows for the filing of a termination petition if the child had been abandoned for six months immediately prior to such filing. Additionally, there are provisions for expediting the calendaring of adoption proceedings contained within Section 112-a of the Domestic Relations Law.

Section 1055(b)(vii) of the Family Court Act specifically addresses situations involving children under the age of one who are abandoned. If the parents do not appear after due notice, the court is to direct the local district to promptly conduct a diligent search to locate the child's parents or other known relatives who are legally responsible for the child. The court is also supposed to direct the local district to commence a proceeding to terminate parental rights six months after the child's care and custody was transferred to the local district unless there has been communication and visitation between the child and his/her parents or person legally responsible.

In relation to not requiring reunification of a surviving child with a parent who has been found by a court of competent jurisdiction to have committed one of the crimes listed above, there is no current State statutory or regulatory provision that explicitly mandates reunification. Rather, there is language in the various placement sections of law, both initial placements and extensions, that requires the court to review whether, where appropriate, reasonable efforts to prevent placement or return the child should have been undertaken, and, if so, whether such reasonable efforts had been made.

IV. REQUIRED ACTION

In relation to infants who are abandoned, local districts must utilize the available legal mechanisms to expedite the termination of the abandoned child's parental rights.

Concerning requiring reunification with a parent who has been found by a court of competent jurisdiction to have committed one of the crimes listed above, a social services district is not required to reunite a surviving child with such parent. There is no State statutory provision that provides, irrespective of the best interests of the child, that the child must be returned to the parent despite an egregious criminal history. As reflected in the

federal Adoption and Safe Families Act (ASFA), the safety of the child is a paramount concern in relation to whether it is appropriate to discharge the child back to a parent. The social services district or authorized agency case planner must employ the Office's risk assessment standards set forth in 18 NYCRR 428.11-13, including the requirement to perform a safety review and reach decisions on the child's safety and the level of risk of future abuse and maltreatment (assuming that all interventions, including foster care, were not being utilized). In the situation where a parent has been convicted of the murder, manslaughter, felony assault or attempts thereof, and the child is deemed to be unsafe and at high risk of future abuse or maltreatment, the district should not plan to reunite the family.

V. EFFECTIVE DATE

The effective date of this Administrative Directive is October 3, 1998, and applies to all children in the custody of the district, regardless of when the infant was abandoned or the parent committed one of the aforementioned crimes.

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and Policy Development