

OFFICE OF CHILDREN AND FAMILY SERVICES

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| LOCAL COMMISSIONERS MEMORANDUM |
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OCFS-4616EL (Rev. 11/98)

Transmittal No: 99 OCFS LCM-26

Date: September 14, 1999

Division: Development and
Prevention Services

TO: Local District Commissioners

SUBJECT: Child Protective Services Legislation

ATTACHMENTS: Chapter 136 of the Laws of 1999
(not available on-line)

The purpose of this release is to inform you of recently enacted State legislation which will impact upon your child protective services program. The Governor's CAPTA Program bill was signed into law and became effective on June 30, 1999, as Chapter 136 of the Laws of 1999. A copy of the enacted legislation is attached. This release outlines the relevant provisions of the legislation and identifies its impact upon your program.

LOCAL OR REGIONAL FATALITY REVIEW TEAMS

Chapter 136 authorizes the creation of local or regional fatality review teams which may investigate the death of a child reported to the Statewide Central Register of Child Abuse and Maltreatment or the death of a child who is in foster care. A local or regional fatality review team would issue a report, which is subject to approval by the Office of Children and Family Services (OCFS), on the findings of its investigation. Chapter 136 grants the same authority and imposes the same restrictions on a local or regional fatality review team as are granted and imposed upon OCFS in its investigation and issuance of fatality reports as set forth in section 20(5) of the Social Services Law (SSL). The Chapter specifically affords a local or regional fatality review team access to client-specific records, including pending, indicated and legally sealed unfounded child protective services records.

The Chapter does not mandate the creation of such teams but authorizes their creation upon the approval of OCFs. Each team must include certain categories of professionals or officials, including a representative from the local child protective service and a representative of OCFs. Membership can be expanded to include other appropriate agencies or institutions. Final guidelines for creation of such teams are under development for release later this year.

Should you be interested in forming such a team, please contact the appropriate regional office for additional information and direction.

CITIZEN REVIEW PANELS

Chapter 136 also authorizes the establishment of at least three citizen review panels, as required by the federal Child Abuse Prevention and Treatment Act Amendments of 1996. At least one panel must be established for New York City. The panel established for New York City must, in turn, include one subcommittee for each of the boroughs of the City of New York. The Office is required to make available resources to support each panel. Each panel must consist of thirteen members who are approved by the Governor or the Legislature. Members must be volunteers who are broadly representative of the community. Employees of federal, State, county or municipal child welfare service agencies are excluded from becoming panel members. Each panel is empowered to examine the policies and procedures of the State and social services districts relating to child protective services. Also, in specific cases, a panel may evaluate the extent to which such agencies are effectively discharging their child protective services responsibilities. Panel members may have access to pending and indicted child protective services reports. However, they are precluded from disclosing any identifying case information. Each panel must issue an annual report containing a summary of its activities and its findings and recommendations.

The Office is actively involved in the implementation of this provision. It has selected the Research Foundation of New York State University of Stony Brook as the contractor to assist in the administrative functioning of the panels. It is not clear at this point where the non-New York City panels will be created. The Office will keep you informed regarding next steps.

MULTIDISCIPLINARY INVESTIGATIVE TEAMS

In addition, Chapter 136 authorizes the creation of local or regional multidisciplinary investigative teams for the purpose of investigating reports of suspected child abuse or maltreatment. While the concept of multidisciplinary teams designated to investigate various categories of child abuse or maltreatment has been in place for several years in various parts of the State, the Chapter codifies the standards for the creation of such teams and expressly authorizes disclosure of client identifiable

records to the team members. Such disclosure includes pending, indicated and legally sealed unfounded child protective services reports. Each team must have written protocols for investigation and interviewing of child victims of abuse and maltreatment.

The Chapter allows but does not require a social services local district to create a multidisciplinary investigative team. If your district is interested in establishing such a team, you may contact the appropriate regional office for technical assistance.

CONFIDENTIALITY OF CHILD PROTECTIVE SERVICES INFORMATION

Various provisions of the Chapter which authorize disclosure of child protective services information to local or regional fatality review teams, citizen review panels and multidisciplinary investigative teams have already been discussed. In addition, the Chapter makes several substantive amendments to Elisa's Law (Chapter 12 of the Laws of 1996). Chapter 136 expands the situations under which unfounded reports may be unsealed and made available to permit access to OCFs for the purpose of supervising a social services district and by a district attorney or other law enforcement official in relation to the investigation or prosecution of the criminal charge of a false report of child abuse or maltreatment. Under prior law, a legally sealed unfounded report could be unsealed in the case of a subsequent report only where the child named in the subsequent report was named in the legally sealed unfounded report. Chapter 136 expands the circumstances when a legally sealed unfounded report may be unsealed in the case of a subsequent report. It adds the situations where the subject of the subsequent report was the subject of the prior unfounded report or where the subsequent report involves a sibling of the child named in the prior unfounded report. In addition, a subject of the report may have access to an otherwise legally sealed unfounded report without regard to when the subject was notified that the report was unfounded. The previous time constraints on such access were eliminated.

Chapter 136 limits redisclosure of unfounded reports, however, unfounded reports may be introduced into evidence in certain limited situations. One such situation is where the subject of the report introduces the unfounded report into evidence either in an abuse or neglect proceeding under Article 10 of the Family Court Act or as a plaintiff in a civil proceeding involving an alleged false report. The other situation is where a district attorney is introducing the unfounded report (including the identity of the source) for the purpose of prosecuting a violation of the false reporting statute (section 240.55 of the Panel Law). Another important provision relating to unfounded reports is the length of time a legally sealed unfounded report must be retained prior to expungement has been reduced to ten years after the receipt of the report.

The Chapter also adds to the categories of circumstances under which a social services district is authorized to disclose child protective services information to the public under section 422-a of the SSL. A district may now disclose certain child protective services information contained in reports involving the near fatality of a child. A "near fatality" is defined as an act that results in the child being placed in serious or critical condition as certified by a physician.

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Social services districts will have to adjust their record retention procedures to reflect the revised expungement dates. Also, you should advise staff concerning the new provisions regarding confidentiality of child protective services information and the disclosure of legally sealed unfounded reports.

Any questions concerning this release should be directed to the appropriate Regional Office of the Office of Children and Family Services.

BRO - Linda Brown (716) 847-3145 USER ID: 89D421
RRO - Linda Kurtz (716) 238-8201 USER ID: 0FH010
SRO - Jack Klump (315) 423-1200 USER ID: 89W005
ARO - Bill McLaughlin (518) 486-7078 USER ID: 0FN010
NYC - Gail Hallerdin (212) 383-1788 USER ID: AA0120
YRO - Pat Sheehy (914) 377-2080 USER ID: AMA110

In addition to the contact persons noted above, you may contact Assistant Counsel John Stupp at (518) 474-8490 if you have any questions concerning this new law.

Donald K. Smith
Deputy Commissioner
Division of Development
and Prevention Services