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Informational Letter

Transmittal:	12-OCFS-INF-07
To:	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
Issuing Division/Office:	Strategic Planning and Policy Development
Date:	October 3, 2012
Subject:	Changes in the Abandoned Infant Protection Act
Suggested Distribution:	Directors of Social Services Staff Development Coordinators Directors of Health Services
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Attachments:	OCFS Pub. 4745 (rev.0 9/12): Pregnant? Scared? Need Help? OCFS Pub. 4745-S (Rev. 09/12): ¿Estás embarazada? ¿Tienes miedo? ¿Estás sola? OCFS Pub. 4749 (rev. 09/12): The Abandoned Infant Protection Act: Guidelines for Health and Safety Professionals
Attachments Available Online:	OCFS Pub. 4745, at: http://www.ocfs.state.ny.us/main/publications/Pub4745.pdf OCFS Pub. 4745-S, at: http://ocfs.ny.gov/main/publications/Pub4745-S.pdf

	OCFS Pub. 4749, at: http://www.ocfs.state.ny.us/main/publications/Pub4749-Pro.pdf
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Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
			Social Services Law § 372-g Penal Law § 260.00 Penal Law § 260.10 Chapter 447 of the Laws of 2010		

I. Purpose

The purpose of this Informational Letter (INF) is to inform local social services districts and other agencies about important changes to the Abandoned Infant Protection Act (AIPA) that were enacted into law through Chapter 447 of the Laws of 2010. The INF also introduces two new brochures about the AIPA that reflect the enacted statutory changes, one brochure designed for professionals who work in health and safety sectors and the other geared toward the general public, particularly people who might consider abandoning a baby.

II. Background

Currently, all fifty states have laws to protect infants who are safely abandoned. In New York State, the AIPA was first enacted into law through Chapter 156 of the Laws of 2000. The purpose of this act was to attempt to save the lives of newborn infants who were unwanted and might otherwise be abandoned and left to possibly die. The law sought to encourage parents who might abandon their babies to do so in a safe manner by establishing an affirmative defense to the misdemeanor crime of Endangering the Welfare of a Child and to the felony crime of Abandonment of a Child, for a defendant who allegedly abandoned an infant who was not more than five days old, so long as he or she:

- intended for the baby to be safe from physical injury and cared for appropriately; and
- left the child with an appropriate person, or left the child in a suitable location and promptly notified an appropriate person of the child’s location; and
- in the case of a charge of abandonment of a child only, intended to wholly abandon the child.

Persons who abandoned infants within these provisions of the AIPA could still be charged with the crimes of endangering the welfare of a child and/or abandonment, but could offer their compliance with them as an affirmative defense.

Chapter 156 of the Laws of 2000 also charged the Office of Children and Family Services (OCFS) with providing information to the general public about the provisions of the AIPA, pursuant to section 372-g of the Social Services Law.

In August 2010, the AIPA was amended by Chapter 447 of the Laws of 2010. Chapter 447 of the laws of 2010 enacted two major changes to the Penal Law: 1) it increased the age of an infant who could be abandoned under its provisions from 5 days old to not more than 30 days old; and 2) it removed criminal liability when a person abandons an infant in accordance with the provisions of sections 260.00 (2) and 260.10 (3) of the Penal Law.

III. Program Implications

The following is a summary of the AIPA, as amended by Chapter 447 of the Laws of 2010:

1. A person is not guilty of the crime of abandonment of a child (Penal Law §260.00) when he or she being a parent, guardian or other person legally charged with the care or custody of a child, wholly abandons such child:
 - a. with the intent that the child be safe from physical injury and cared for in an appropriate manner; and
 - b. the child is left with an appropriate person, or in a suitable location and the person who leaves the child promptly notifies an appropriate person of the child's location; and
 - c. the child is not more than 30 (thirty) days old.

2. A person is not guilty of the crime of endangering the welfare of a child (Penal Law §260.10 [2012]) when he or she wholly abandons the child:
 - a. with the intent to relinquish responsibility for and right to the care and custody of such child; and
 - b. with the intent that the child be safe from physical injury and cared for in an appropriate manner; and
 - c. the child is left with an appropriate person, or in a suitable location and the person who leaves the child promptly notifies an appropriate person of the child's location; and
 - d. the child is not more than 30 (thirty) days old.

Nothing in the AIPA changes the requirement for mandated reporters to report the abandonment of an infant to the Statewide Central Register of Child Abuse and Maltreatment (child abuse hotline) or the requirement to search for the parents of an abandoned infant. However, nothing in the law requires a person who abandons an infant under its provisions to provide his or her name or any other information.

The AIPA provides no clarification of the terms “appropriate person” or “suitable location,” leaving those determinations to local district attorneys. Historically, it has always been acceptable to leave an infant with a staff member at a hospital or at a police or fire station.

The AIPA is specifically referenced in instructions for Appendix H of the County Child and Family Services Plan, pertaining to a *Memorandum of Understanding*

between the District Attorney's Office and Child Protective Services. Appendix H requires each local district to provide either a signed memorandum of understanding (MOU) or a narrative summary of cooperative procedures to be followed by both parties in investigations of suspected child abuse and maltreatment. Any references to the AIPA in such MOU's should be updated, as applicable, to reflect the changes in the AIPA described in this INF.

In order to fulfill its obligations to provide information to the public about the AIPA, OCFS has rewritten two brochures, listed below, to reflect the current law. Instructions for obtaining copies of these brochures can be found on the OCFS website at: <http://ocfs.ny.gov/main/forms>.

- **Pub. 4745 (Rev. 09/12) – “Pregnant? Scared? Need Help?”**
- **Pub. 4745-S (Rev. 09/12) (Spanish) - ¿Estás embarazada? ¿Tienes miedo? ¿Estás sola?**

This brochure is directed to the general public, but especially to young women who are pregnant or just gave birth and may be at risk of abandoning an infant.

This brochure replaces a previous Pub. 4745 (Rev. 01/05), which was titled “Are you carrying a secret?”

- **Pub. 4749 (Rev. 09/12) – “The Abandoned Infant Protection Act: Guidelines for Health & Safety Professionals”**

This brochure is directed to professionals who may be working with anyone at risk of abandoning an infant or who may encounter an abandoned infant in the course of their work duties.

This brochure replaces a previous Pub. 4749 (Rev. 02/05), which bore the same title as the current brochure. A Spanish version of this brochure (Pub. 4749-S) will be available (online only) soon.

All remaining earlier versions of these brochures should be discarded. They contain information rendered incorrect by the 2010 amendments to the AIPA.

OCFS maintains an Abandoned Infant Helpline (1-866-505-SAFE [7233]), which provides referrals and general information about the law. This hotline is currently staffed from 8:00 a.m. to 8:00 p.m. seven days a week. OCFS also has information about the AIPA on its website, at the following link: <http://ocfs.ny.gov/main/safe>.

/s/ Nancy W. Martinez

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