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| LOCAL COMMISSIONERS MEMORANDUM |
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Transmittal No: 91 LCM-169

Date: September 19, 1991

Division: Family and Children
Services

TO: Local District Commissioners

SUBJECT: Laws of 1991: Child Abuse and Maltreatment

ATTACHMENTS: There are no attachments to this LCM

The purpose of this memorandum is to inform you of the provisions of recently enacted legislation pertaining to child protective services. The Child Protective Services Program Manual will be updated to provide information regarding many of these provisions, including any which require necessary action to be taken by local CPS staff. Further, regulations will be amended, as necessary, for implementing the chapter laws discussed in this memorandum.

Following is a summary description of changes to various sections of New York State Law made by the Chapter Laws of 1991.

A. ACCESS TO CPS INFORMATION

Chapter 22 amends Section 422(4)(A)(k) of the Social Services Law (SSL) to expand the circumstances in which child protective service (CPS) information would be provided to a probation service. A probation service is now authorized to receive CPS information from either the local social services district or State Central Register when conducting an investigation relating to a juvenile delinquency proceeding under Article 3 of the Family Court Act (FCA) or a proceeding concerning whether a person is in need of supervision under Article 7 of the FCA.

The probation service may receive such information when conducting an investigation where there is reason to suspect the child who is subject to an Article 3 or 7 proceeding or the child's sibling may have been abused or maltreated. In order for the probation service to receive such information, the child or the child's sibling or parent, guardian or other person legally responsible for the child must be named in an indicated report of child abuse or maltreatment and the information must be necessary for the making of a determination or recommendation to the court. For further information concerning Chapter 22, see 91-LCM-81. Chapter 22 became effective on 6/20/91.

Chapter 67 amends Section 422(4)(A)(g) of the SSL to permit the release of CPS information to a provider or coordinator of services to which a social services district or a child protective service has referred a family, or to whom a child and/or the child's family have referred themselves. Chapter 67 became effective on 7/21/91.

Chapter 188 amends Section 422(4)(A) of the SSL to clarify and standardize the circumstances under which law enforcement officials can obtain access to CPS information possessed by either the local social services district or the SCR. The amendment consolidates provisions within Section 422(4)(A) which provide for access to CPS information by district attorneys, assistant district attorneys, investigators for district attorneys, state police officers, and officers of a city, county, town or village police department or sheriff's office. Such law enforcement officials are entitled to CPS information when their request states that the information is necessary to conduct a criminal investigation or prosecution of a person; that there is reasonable cause to believe that the person is a subject of a report of child abuse or maltreatment; and it is reasonable to believe that, due to the nature of the crime being investigated or prosecuted, the records may be related to the investigation or prosecution. Chapter 188 became effective on 6/21/91.

B. COURT RELATED

Chapter 34 amends Section 1112(a) of the FCA to permit appeals of interim and final family court orders in child neglect proceedings and establishes a preference for such appeals. Prior to the enactment of Chapter 34, only appeals involving abuse proceedings were given preference. Now appeals involving abuse or neglect are given preference on the appropriate appellate division of the supreme court calendar. Further, an order or decision discharging a child would be stayed pending determination of the appeal if the Family Court or the appellate division found a stay to be necessary to avoid imminent risk to the child's life or health. Chapter 34 became effective on 4/6/91.

Chapter 69 corrects technical problems in four 1990 chapter laws relating to Family Court proceedings. It amends section 1036(c) of the FCA which provides for service of process on non-resident or non-domiciliary respondents in CPS proceedings. Additionally, as a condition of the Court obtaining personal jurisdiction over a non-resident or non-domiciliary respondent in a child protective proceeding, the abuse or neglect must have occurred within the State. It also amends the Civil Practice Law and Rules (CPLR) to be consistent with the amendment to Section 1036(c) of the FCA.

Chapter 69 repeals Section 1033-b(2) of the FCA. As a result, notice of initial appearance in a CPS proceeding must be given to the respondent, petitioner, and law guardian by serving them with a copy of the summons and petition in accordance with the provisions of Section 1035 and 1036 of the FCA.

Chapter 69 also amends Section 1039-a of the FCA concerning notifying law guardians about indicated child abuse or maltreatment reports where a child protective proceeding has resulted in an adjournment in contemplation of dismissal (ACD). It clarifies that CPS must notify the law guardian of an indicated report in which the respondent is the subject of or other person named in the report, during the time period that the ACD remains in effect. It also amends Section 1052-a of the FCA to make analogous changes relating to notifying law guardians about indicated reports during the term of: a suspended judgement; a court order placing a child outside of the child's home; or an order of protection which results from the final disposition in a child protective proceeding under Section 1052 of the FCA. Section 422(4)(A)(v) of the SSL, which relates to access to child protective information by law guardians, is amended to complement the other amendments in this paragraph. It clarifies that a law guardian is entitled to access child protective information involving the respondent in the proceeding for which the law guardian was appointed, while the law guardian's appointment remains in effect. Chapter 69 became effective on 4/22/91.

Chapter 75 amends Section 1033-b of the FCA in relation to the initial appearance in a child protective proceeding. It clearly establishes the right of the respondent to be notified about the allegations contained in the petition; the right to an adjournment of the proceeding to obtain counsel; the right to request a hearing for return of the child, where a child has been removed; and that the right to request a hearing for return of the child, at any time during the the proceeding. The amendment provides that recitation of the respondent's rights by the court cannot be waived (i.e. the court must must recite to the respondent the respondent's rights whether the respondent wants to hear them or not). Additionally, it amends Section 1058 of the FCA to require a child protective agency to notify the parties to a child protective proceeding of a family's status and location when a child protective order of disposition or a period of adjournment in contemplation of dismissal is due to expire and no application for an extension of such order or period of adjournment has been made. Chapter 75 became effective on 4/26/91.

Chapter 113 amends Section 1052-b of the FCA to require that when the Family Court has entered an order of disposition in a child protective proceeding, the respondent's counsel must in writing promptly advise the respondent of his or her right to appeal, the time limitations involved, the manner for instituting an appeal and obtaining a transcript of the testimony, and the right to apply for leave to appeal as a poor person if the respondent is unable to pay for the cost of an appeal. The respondent's counsel must also explain to the respondent the procedures for instituting an appeal, the possible reasons upon which an appeal may be based and the nature and possible consequences of the appellate process. Finally, it is the duty of the respondent's counsel to ascertain whether the respondent wishes to appeal and, if so, to serve and file the necessary notice of appeal. Chapter 113 becomes effective on 9/1/91.

Chapter 162 amends Section 1038-a of the FCA to authorize the Family Court, upon the motion of a law guardian, to order a respondent in a child protective proceeding to provide non-testimonial evidence (blood, urine, hair or other body materials). Chapter 162 became effective on 6/10/91.

Chapter 417 amends Section 1114 of the FCA to create an exception to the general authority of a justice of an appellate division of the Supreme Court to stay execution of any court order on such conditions as may be appropriate. This exception to the court's authority occurs when any party to a child protective proceeding or the child's law guardian applies to a justice of the appellate division for a stay of an order returning a child to the custody of a respondent when such order was issued pursuant to Sections 1021-1029 of the FCA. The party applying for the stay is required to notify the attorneys for all parties and the law guardian of the time and place of the application for the stay. At the time of application, any party present may request oral arguments. Oral arguments must take place on the application except for good cause. This good cause must be stated on the record. The party applying for the stay must state, in the application, the errors of fact or law allegedly committed by the Family Court. The party applying to the Court must make every reasonable effort to obtain a complete transcript of the Family Court proceeding. If the Court grants a stay, a schedule must be set to expedite the appeal. Chapter 417 becomes effective on 9/1/91.

Chapter 455 amends Chapter 505 of the Laws of 1985 to extend from November 1, 1991, until November 1, 1996, the authority of the courts to use two-way closed-circuit television for child witnesses in sex crime prosecutions. It also amends Section 65.10 of the Criminal Procedure Law to require the judge in a sex crime prosecution to hold a hearing and make specific factual findings before authorizing the use of closed-circuit television in such proceedings. Chapter 455 became effective on 7/19/91.

Chapter 694 amends Section 1038(c) of the FCA to authorize the court to order the videotaping of validation interviews of children in sex abuse cases for purposes of providing expert testimony to the court. Videotaping of such interviews will enable the parties to an Article 10 proceeding to view the validation in its entirety. In determining whether such examination or interview should be videotaped, the court must consider a number of factors relating to the effect on the child and the needs of the

parties for the videotaping. The person conducting the interview must submit a statement confirming that the videotape is a complete and unaltered record of the interview with the child. Further, the proponent of entry of the videotape into evidence must show the court "that the potential prejudicial effect is substantially outweighed by the probative value of the videotape in assessing the reliability of the validator in court." Chapter 694 becomes effective on 10/31/91.

C. STATE CENTRAL REGISTER (SCR) CLEARANCES

Chapter 260 amends Section 424-a of the SSL to authorize a provider agency to allow employees of the agency and providers or employees of providers of goods and services to the agency to have supervised contact with children in the care of the agency during the period between submission of the names of such employees to the SCR for screening and receipt of the screening results from the SCR. For further information concerning Chapter 260 see 91-INF-39. Chapter 260 became effective on 7/1/91.

Chapter 164 amends Section 112(2) and (7) of the Domestic Relations Law (DRL) and Sections 1704, 1706 and 1725 of the Surrogate's Court Procedure Act (SCPA) to eliminate various requirements relative to SCR screening. It will no longer be permissible for the court to inquire about the child in an adoption or guardianship proceeding. Additionally, it will no longer be possible to inquire about whether the prospective adoptive parent or guardian is "an other person named in a[n indicated CPS] report". Chapter 164 becomes effective on 1/1/92.

D. CHILD PROTECTIVE SERVICE INVESTIGATIONS

Chapter 164 amends Section 424 of the SSL to require social services districts to determine whether a child abuse or maltreatment report is indicated or unfounded within 60 days rather than the present 90 days. During the first six months of implementation, where a social services district has not made a determination within 60 days and documents why no determination was able to be made within 60 days, the district will have an additional 30 days to make a determination. The provision allowing for an additional 30 days to make a determination will be in effect until July 1, 1992. After July 1, 1992 all determinations are due 60 days from the date of the oral report. Chapter 164 becomes effective on 1/1/92.

Chapter 250 amends Chapter 676 of the Laws of 1985, Chapter 719 of the Laws of 1986 and Chapter 634 of the Laws of 1988 to provide that those chapters will expire on March 31, 1992 instead of June 30, 1991. Chapter 250 extends the provisions of the Child Abuse Prevention Act of 1985 (CAPA), which involve the investigation of reports of child abuse or maltreatment of children in residential care. Chapter 250 became effective on 7/1/91.

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Chapter 225 amends Section 422(2)(a) of the SSL to preclude the SCR from failing to take a report of alleged abuse or maltreatment or transmit such report for investigation solely because the caller is unable to identify the person who allegedly committed such abuse or maltreatment. Chapter 225 became effective on 7/1/91.

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