

NEW YORK STATE

DEPARTMENT OF SOCIAL SERVICES

1 NORTH PEARL STREET, ALBANY, NEW YORK 12243



CESAR A. PERALES
Commissioner

[An Administrative Directive is a written communication to local Social Services Districts providing directions to be followed in the administration of public assistance and care programs.]

ADMINISTRATIVE DIRECTIVE

TRANSMITTAL NO.: 85 ADM-42
[Family & Children Services]

TO: Commissioners of Social Services
Authorized Agency Director

SUBJECT: Chapter 911 of the Laws of 1983
Termination of Parental Rights of Incarcerated Parents

DATE: September 3, 1985

SUGGESTED DISTRIBUTION:
Directors of Services
Foster Care Staff
Adoption Workers
Legal Staff

CONTACT PERSON: Any questions concerning the information contained in this release should be directed to Mr. Jamie Greenberg, Division of Services, 40 North Pearl Street, 11-C, Albany, NY 12243; telephone 1-800-342-3715, ext. 49591 or 518-474-9591.

I. PURPOSE

The purpose of this release is to advise local social services officials of the provisions of Chapter 911 of the Laws of 1983 in relation to the termination of parental rights of incarcerated parents.

II. BACKGROUND

Prior to the enactment of this legislation, the potentially conflicting statutory requirements of Section 111.2(d) of the Domestic Relations Law and Section 384-b.7(d)(iii) of the Social Services Law created ambiguity concerning whether the consent of an incarcerated parent had to be obtained before his/her child could be placed for adoption. Under the Domestic Relations Law, parents incarcerated as a result of a felony conviction had no right to withhold their consent since they were deprived of their civil rights. Alternatively, under the requirements of

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous Reference
		430.12	Section 384-b SSL		

DSS: (REV. 8/82)

Section 384-b of the Social Services Law, termination of the parental rights of persons was precluded because they were deemed unable to maintain contact with their children.

Chapter 911 of the Laws of 1983 amended the Domestic Relations Law to remove the provision which had permitted a child of an incarcerated parent to be adopted without obtaining the consent of the parent. In addition, section 384-b of the Social Services Law was amended to set forth the conditions which must be present in order to find that an incarcerated parent has abandoned or permanently neglected his/her child.

III. PROGRAM IMPLICATIONS

A. TERMINATION OF PARENTAL RIGHTS

The first issue an authorized agency should address in the context of Chapter 911, is whether it is appropriate to establish or strengthen a relationship between the child and his or her incarcerated parent or terminate the parental rights of that incarcerated parent. If a relationship is to be encouraged, this legislation requires the incarcerated parent to cooperate with the child caring agency and requires the agency to make diligent efforts to arrange for the parent to visit or communicate with the child. If the agency determines that it would not be appropriate to encourage such relationship, the agency should be aware that parental rights can no longer be automatically terminated based solely on the fact that the parent is incarcerated. Agencies can, however, utilize the abandonment or permanent neglect provisions of Section 384-b of the Social Services Law to terminate parental rights regardless of the fact that the parent is incarcerated.

Under Section 384-b, a parent's failure to visit or communicate with the child or the agency responsible for the care of that child for a period of six months constitutes abandonment. Termination of parental rights on the grounds of abandonment should theoretically be a relatively straightforward matter when such lack of contact has occurred as described in subdivisions (4)(b) and (5)(a)(b) of Section 384-b.

Termination of parental rights based on permanent neglect may prove to be a more difficult avenue to pursue. In order to terminate parental rights based on permanent neglect, an authorized agency is required to show that diligent efforts to assist, develop and encourage a meaningful relationship between the parent and child had failed. Such efforts need not be undertaken if:

- . the parent has failed for six months to keep the agency apprised of his or her location;
- . the parent has failed on more than one occasion while incarcerated to cooperate with the agency to plan for the child's future or plan and arrange visits with the child; or
- . such efforts would be detrimental to the best interests of the child.

NOTE:

Section 384-b(7)(c) of the Social Services Law states that:

"In determining whether a parent has planned for the future of the child, the court may consider the failure of the parent to utilize medical, psychiatric, psychological and other social and rehabilitative services and material resources made available to such parent."

In order to show diligent efforts when one of the above exceptional situations does not exist, an authorized agency must make reasonable attempts to assist, develop and encourage a meaningful relationship between the parent and child. Such efforts shall include, but are not limited to:

- . consultation and cooperation with the parents in developing a plan for appropriate services to the child and his family;
- . informing the parents at appropriate intervals of the child's progress, development and health;
- . making suitable arrangements for an incarcerated parent to visit the child within the correctional facility, if such visiting is in the best interest of the child. Such arrangements shall include, but shall not be limited to:
 - . transportation of the child to the correctional facility
 - . providing or suggesting social or rehabilitative services to resolve or correct the problems other than incarceration itself which impair the incarcerated parent's ability to maintain contact with the child.

NOTE:

When the parent is incarcerated in a correctional facility located outside New York State, the authorized agency is required to make such arrangements with the correctional facility only if reasonably feasible and permissible in accordance with the laws and regulations applicable to such facility.

B. VISITATION

In determining the appropriateness of visitation, the agency must recognize factors related to the best interests of the child. For the child placed in care as a result of the parent's incarceration, if it is determined that continuation of the parental relationship is in that child's best interest an assessment should be made of the incarcerated parent's intent or ability to maintain such a relationship. A permanency planning goal should then be established, and, if appropriate, a visitation plan should also be established.

For the child already in care at the time of the parent's incarceration, consideration should be given to the permanency planning goal previously established for that child. If the goal is to return the child to the home of the parent who was subsequently incarcerated, reassessment of this goal could be necessary. One important factor to consider is the length of time the parent is to be incarcerated. For example, if the parent were to be incarcerated for 20 years, the permanency planning goal would not be to return the child home. This fact alone, however, does not relieve the agency from its obligation to consider other factors in arranging for visitation. When assessing whether it is in the child's best interests to visit his/her incarcerated parent the agency should also consider the parent-child relationship prior to incarceration, as well as the child's age and desire to visit, the nature of the crime committed, and the circumstances surrounding the crime.

If the parent were incarcerated within New York State, presumably visitation would be possible. However, should the parent be incarcerated in New Mexico, for example, it would probably not be "reasonably feasible" to arrange for the child to visit there on any regular basis. These determinations must be made on an individual case basis. According to Departmental utilization review regulations, 18 NYCRR 430.12(d)(1)(i), visitation should be at least monthly, if the permanency planning goal is to discharge the child to his parents.

In arranging for the child to visit his/her parent in a New York State operated correctional facility, the caseworker should contact the State Correction Department's Division of Ministerial and Family Services, at (518)457-8106 or (212) 678-2445. The staff of this office will help facilitate visitation by contacting the particular facility where the parent is located to arrange a mutually acceptable visitation plan, when feasible. They will also be able to provide information about the type of visitation setting the facility in question maintains (i.e., large public visiting hall; private visiting room; overnight private trailer), visiting hours, and possible transportation options. For correctional facilities not operated by New York State (eg. county jail) the caseworker will need to call the facility directly to make visitation arrangements.

In situations where visitation is deemed to be in the best interests of the child, districts and agencies are encouraged to pursue this avenue as diligently and creatively as possible. For state operated facilities, the Division of Ministerial and Family Services will, in many instances, advocate for a maximized visiting schedule because they believe that this is beneficial for the inmate/parent. Where districts determine that a significant number of their foster children's parents and guardians reside in a particular facility (e.g. Bedford Hills, a large facility for woman), consideration should be given to establishing a mechanism for visitor transportation from the community to the facility. Such a mechanism, if deemed practicable, could be operated by volunteers, and would help to supplement any transportation which the State Corrections Department may facilitate.

In situations where visitation is to occur there are logistical issues which need to be considered. One such issue is arranging for an adult to accompany the child for the visits. In most instances either the agency caseworker, foster parent, or the child's relative should be the person who accompanies the child.

The agency's policy and procedures concerning this matter and other related issues needs to be examined and clarified where necessary.

C. COSTS

Reimbursement for transportation costs for a child to visit his/her incarcerated parent will vary depending on where the child is placed. If the child is in the care of a voluntary agency, transportation costs are covered by the following policy:

The Standards of Payment system includes transportation costs as an item of expense. Therefore, the maximum state aid rate includes some transportation costs. The Department's position is that transportation, including transportation involved in home visits within a fifty mile radius of the foster care facility where the child is receiving care, is included in the maximum state aid rate.

All transportation costs for visits between foster children and their parents outside of a fifty mile radius will not be considered to be included in the maximum state aid rate since the cost of frequent long distance visitation could not ordinarily be absorbed in the rate structure. Costs for transportation for home visits in excess of a fifty mile radius may be negotiated and agreed upon through Section (e) of the Financial Agreements of the model contract as a separate amount above the maximum state aid rate to be paid to the voluntary agency if the transportation is to be furnished by the voluntary agency. Transportation expenses for home visits in excess of a fifty mile radius may also be paid directly or provided directly by the social service district without involving the voluntary agency in specific contract provisions.

Expenses paid to voluntary agencies and/or foster mothers should be authorized through the WMS case with a type code of "72" (Transportation - Regular) and claimed on the Schedule K under the appropriate eligibility category of the foster child.

When a child is in the care of the local social services district or if expenses are to be paid to a child's relative for transporting the child such expenses should be reported as a non-salary expense on the DSS-923 and coded as F-2.

The agency's policy regarding weekend work should be checked since it is possible that some correctional facilities may only allow visitation on Saturday or Sunday. Likewise, it is possible that visitation would be at such a distance from the child's placement that it would not be feasible to travel to and from the correctional institution in one day. This would require further examination of the agency's policy about overnight accommodations for the caseworker and the child. This should, however, be discouraged unless absolutely necessary.

Finally, it is conceivable that there could be expenses for visitation outside the state. These costs need to be addressed on an individual basis, as each case will be different.

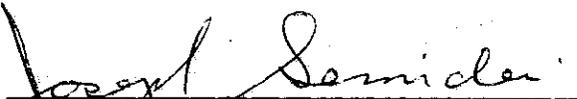
For contact people or claiming questions the district may contact Bureau of Local Financial Operations - Irid Gordon (Upstate) 1-800-342-4100, extension 4-7549 or Marvin Gold (Metro) (212) 488-4517.

IV. REQUIRED ACTION:

Local districts are required to take the necessary steps to assure that the provisions of this new law are administered for families in their caseload where the aforementioned situations are applicable.

V. EFFECTIVE DATE:

The effective date of Chapter 911 of the Laws of 1983 is January 1, 1984. A copy of this law is attached for your information.



Joseph Semidei
Deputy Commissioner
Division of Family and
Children Services

ATTACHMENT

**TERMINATION OF PARENTAL RIGHTS OF
INCARCERATED PARENT**

Memoranda relating to this chapter, see Legislative and Executive Memoranda, post

CHAPTER 911

Approved Aug. 8, 1983, effective as provided in section 6

AN ACT to amend the social services law, the domestic relations law and the correction law, in relation to the termination of the parental rights of an incarcerated parent

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

Section 1. Legislative findings and declaration. The legislature finds that the incarceration of a parent presents special considerations in achieving a permanent and stable environment for a child. Further, the prevailing public policy to protect the natural parent's rights and to terminate those rights where, for all practical purposes, the parent-child relationship has ceased to exist would be advanced by the revision of law governing the termination of parental rights of an incarcerated parent and the adoption of such parent's child.

The legislature further finds and declares that:

(i) A parent who has been incarcerated and, as a result, has been deprived of his or her civil rights pursuant to the provisions of the civil rights law, should not, by that fact alone, be deprived of his or her parental right to consent or withhold consent to the adoption of his or her child;

(ii) A parent who has been incarcerated, however, does and should have an obligation to fulfill, while actually incarcerated, the requirement set forth in section three hundred eighty-four-b of the social services law, of visiting or communicating at least once every six months with the child or authorized agency. Having failed to fulfill such requirement, such parent should have his or her parental rights terminated upon the ground of abandonment pursuant to section three hundred eighty-four-b of the social services law;

(iii) A parent who has been incarcerated should also fulfill, while actually incarcerated, the obligations of a parent as described in the provisions of section three hundred eighty-four-b of the social services law relating to the termination of parental rights upon the ground of permanent neglect. However, such ground of permanent neglect should recognize the special circumstances and need for assistance of an incarcerated parent to substantially and continuously or repeatedly maintain contact with, or plan for the future of his or her child. An incarcerated parent who has failed to fulfill these obligations may have his or her parental rights terminated upon such ground; and

(iv) A parent who has been incarcerated also has an obligation to maintain substantial or frequent visits or communications with the child and having failed to fulfill that obligation, the parent should have his or her consent to adoption dispensed with pursuant to section one hundred eleven of the domestic relations law.

The intent of this act is to revise the social services law and domestic relations law so that such laws are consistent with the above legislative findings, and to confirm the prevailing interpretation of section three hundred eighty-four-b of the social services law that the tolling provisions of such section relating to permanent neglect are not applicable to the provisions of such section relating to abandonment.

§ 2. Subdivision two of section three hundred eighty-four-b of the social services law, as added by chapter six hundred sixty-six of the laws of nineteen hundred seventy-six, is amended to read as follows:

2. For the purposes of this section, (a) "child" shall mean a person under the age of eighteen years; and, (b) "parent" shall include an incarcerated parent unless otherwise qualified.

§ 3. Paragraphs (d), (e) and (f) of subdivision seven of section three hundred eighty-four-b of such law, as added by chapter six hundred sixty-six of the laws of nineteen hundred seventy-six, are amended to read as follows:

(d) For the purposes of this subdivision:

(i) A parent shall not be deemed unable to maintain contact with or plan for the future of the child by reason of such parent's use of drugs or alcohol, except while the parent is actually hospitalized or institutionalized therefor; and

(ii) [A parent shall be deemed unable to maintain contact with or plan for the future of the child while he is actually incarcerated; and

(iii)] The time during which a parent is actually hospitalized[,] or institutionalized[, or incarcerated] shall not interrupt, but shall not be part of, a period of failure to maintain contact with or plan for the future of a child.

(e) Notwithstanding the provisions of paragraph (a) of this subdivision, evidence of diligent efforts by an agency to encourage and strengthen the parental relationship shall not be required when [the]:

(i) The parent has failed for a period of six months to keep the agency apprised of his or her location; or

(ii) An incarcerated parent has failed on more than one occasion while incarcerated to cooperate with an authorized agency in its efforts to assist such parent to plan for the future of the child, as such phrase is defined in paragraph (c) of this subdivision, or in such agency's efforts to plan and arrange visits with the child as described in subparagraph five of paragraph (f) of this subdivision.

(f) As used in this subdivision, "diligent efforts" shall mean reasonable attempts by an authorized agency to assist, develop and encourage a meaningful relationship between the parent and child, including but not limited to:

(1) consultation and cooperation with the parents in developing a plan for appropriate services to the child and his family;

(2) making suitable arrangements for the parents to visit the child except that with respect to an incarcerated parent, arrangements for the incarcerated parent to visit the child outside the correctional facility shall not be required unless reasonably feasible and in the best interest of the child;

(3) provision of services and other assistance to the parents, except incarcerated parents, so that problems preventing the discharge of the child from care may be resolved or ameliorated; [and]

(4) informing the parents at appropriate intervals of the child's progress, development and health; and

(5) making suitable arrangements with a correctional facility and other appropriate persons for an incarcerated parent to visit the child within the correctional facility, if such visiting is in the best interests of the child. When no visitation between child and incarcerated parent has been arranged for or permitted by the authorized agency because such visitation is determined not to be in the best interest of the child, then no permanent neglect proceeding under this subdivision shall be initiated on the basis of the lack of such visitation. Such arrangements shall include, but shall not be limited to, the transportation of the child to the correctional facility, and providing or suggesting social or rehabilitative services to resolve or correct the problems other than incarceration itself which impair the incarcerated parent's ability to maintain contact with the child. When the parent is incarcerated in a correctional facility located outside the state, the provisions of this subparagraph shall be construed to require that an authorized agency make such arrangements with the correctional facility only if reasonably feasible and permissible in accordance with the laws and regulations applicable to such facility.

§ 4. Subdivisions two and three of section one hundred eleven of the domestic relations law, as amended by chapter six hundred sixty-six of the laws of nineteen hundred seventy-six, paragraph (e) as amended and paragraph (f) of subdivision two as added by chapter five hundred seventy-five of the laws of nineteen hundred eighty, are amended to read as follows:

2. The consent shall not be required of a parent or of any other person having custody of the child:

(a) who evinces an intent to forego his or her parental or custodial rights and obligations as manifested by his or her failure for a period of six months to visit the child and communicate with the child or person having legal custody of the child, although able to do so; or

(b) who has surrendered the child to an authorized agency under the provisions of section three hundred eighty-four of the social services law; or

(c) for whose child a guardian has been appointed under the provisions of section three hundred eighty-four-b of the social services law; or

(d) [who has been deprived of civil rights pursuant to the civil rights law and whose civil rights have not been restored; or

(e) who, by reason of mental illness or mental retardation, as defined in subdivision six of section three hundred eighty-four-b of the social services law, is presently and for the foreseeable future unable to provide proper care for the child. The determination as to whether a parent is mentally ill or mentally retarded shall be made in accordance with the criteria and procedures set forth in subdivision six of section three hundred eighty-four-b of the social services law; or

[(f)] (e) who has executed an instrument, which shall be irrevocable, denying the paternity of the child or consenting to the other parent's surrender of the child or consent to the child's adoption, such instrument having been executed after conception and acknowledged or proved in the manner required to permit the recording of a deed.

3. Notice of the proposed adoption shall be given in such manner as the judge or surrogate may direct and an opportunity to be heard thereon

may be afforded to a parent [who has been deprived of civil rights and to any other parent] whose consent to adoption may not be required pursuant to subdivision two, if the judge or surrogate so orders. Notwithstanding any other provision of law, neither the notice of a proposed adoption nor any process in such proceeding shall be required to contain the name of the person or persons seeking to adopt the child.

§ 5. The correction law is amended by adding a new section six hundred nineteen to read as follows:

§ 619. Cooperation with authorized agencies of the department of social services. It shall be the duty of an official of any institution under the jurisdiction of the commissioner of correctional services to cooperate with an authorized agency of the department of social services in making suitable arrangements for an inmate confined therein to visit with his or her child pursuant to subdivision seven of section three hundred eighty-four-b of the social services law.

§ 6. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law; provided, however, that nothing herein contained shall be construed so as to alter, affect, impair, defeat or restore any right, obligations, duties or interests accrued, incurred, conferred or terminated prior to the effective date of this act.